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Canada

RESTRICTIVE TRADE PRACTICES COMMISSION

LOSS LEADER SELLING

TRANSCRIPT OF EVIDENCE

Vol. 7-9

TORONTO

JUN 4 1954

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Regarding Loss-Leader Selling

Lawson Appliances 1019
Represented by:
Arthur D. Lawson

Canadian Home Laundry Manufacturers Association 1050
Represented by:
Mr. C. B. Pearce, Manager of Laundry Equipment
Section for Canadian Westinghouse Company
Mr. A. Bloom, Vice-President of Coffield Washer Company
Mr. R. Neal, Manager, Hamilton Branch, Canadian Manufacturers'
Association, and Secretary of Canadian
Home Laundry Manufacturers' Association
Mr. G. Campbell, General Sales Manager, Easy Washing
Machine Company
Mr. G. Beatty, Vice-President of Beatty Washing
Machine Company
Mr. C. Raymond, General Sales Manager,
Brantford Washing Machine Company

Sunbeam Corporation 1107
Represented by:
Mr. B. H. L. Symmes
Herman T. VanWell

TORONTO, FRIDAY, JUNE 4th, 1954

---On resuming at 9.45 o'clock a.m.

Delegation from: LAWSON APPLIANCES.

Comprising: Arthur D. Lawson.

THE CHAIRMAN: The hearing will come to order.

The first item we have this morning I believe is a presentation from a Mr. Lawson of Lawson Appliances.

If you would let us have your full name, Mr. Lawson?

MR. LAWSON: Arthur D. Lawson. Lawson Appliances.

THE CHAIRMAN: It is not a limited company?

MR. LAWSON: That is correct.

THE CHAIRMAN: It is not a corporation?

MR. LAWSON: Not a corporation.

THE CHAIRMAN: And the place you carry on business is where?

MR. LAWSON: 1640 Avenue Road.

THE CHAIRMAN: That is where, north of Eglinton?

MR. LAWSON: Just north of Lawrence Avenue.

THE CHAIRMAN: Now, do you wish to make any statement yourself to open the discussion

or would you prefer to answer questions?

MR. LAWSON: I prefer to answer questions.

THE CHAIRMAN: Mr. Wickwire?

MR. WICKWIRE: Yes, Mr. Chairman.

What is the nature of your business, Mr. Lawson?

MR. LAWSON: Electrical household appliances and furniture.

MR. WICKWIRE: And furniture. How long have you been in that business?

MR. LAWSON: A little over five years.

MR. WICKWIRE: What training had you had for the electrical appliance business before you went into it?

MR. LAWSON: Well, I received a course in electrical appliances as far back as 1940, 1941, and then interrupted by the war and after the war I was employed with Keene's Furniture Store in London, Ontario, as manager of their appliance department. I was with them for about a year.

MR. WICKWIRE: Then you went into business for yourself?

MR. LAWSON: I went to Chicago and took training there in all phases of the electrical appliance field at Coyne Electrical Institute for over a year. Then I worked in the Ontario Sales Department of Moffat's Limited for over a year, working with the general sales manager of the firm. In late 1948 we commenced business on Avenue Road.

MR. WICKWIRE: At your present location?

MR. LAWSON: No, at 1773 Avenue Road.

MR. FAVREAU: You say "we commenced business", are you in partnership?

No,

MR. LAWSON: ^I had a number of young veterans with me, assisting.

MR. WICKWIRE: You moved to your present location when?

MR. LAWSON: At the beginning of -- December of 1952.

MR. WICKWIRE: Have you, since you started in business, done a volume business?

MR. LAWSON: We have built our business up on a volume business. We started at 1773 Avenue Road and remained there for approximately two years. Then, we expanded and opened another store at 2023 Avenue Road and ran both stores together while we built our larger store, over 9,000 square feet of showroom. Since then we have built up our business considerably.

MR. WICKWIRE: Do you maintain a warehouse with your present establishment?

MR. LAWSON: Yes. We sometimes use a cartage company warehouse.

MR. WICKWIRE: Have there been any recent changes or developments in appliance selling?

MR. LAWSON: Not recent, I would say it is more something that has evolved several years ago, just when we started business, or even before we started business. It was something which was

very obvious and apparent.

MR. WICKWIRE: What is that?

MR. LAWSON: That competition is going to force prices down, where the prices should be I think, and be done in volume.

MR. WICKWIRE: Be done in volume. And that is the policy which has been in effect in your store since you have been in business?

MR. LAWSON: That has been our basic policy.

MR. WICKWIRE: What do you say is the effect of price-cutting on branded nationally advertised appliances?

MR. LAWSON: Well, for one thing they certainly increase in volume and we have found that they enhance the trade-mark, they popularize it. We have found in the last few years that our sales have more than quadrupled, in the last two years, in the small items due to the cutting of prices - that is, lowering of prices - and I should say at the present time they are the only small appliances that we are being asked for by the public.

MR. WICKWIRE: Do you deal only in branded appliances?

MR. LAWSON: Mostly name brand appliances. It is rather irrelevant but some companies consider themselves name brands who really are not. We handle, mostly, large nation-wide brands.

MR. WICKWIRE: Nationally advertised brands?

MR. LAWSON: Nationally advertised brands.

MR. WICKWIRE: Has it been your experience that the customer has been misled because of any price reduction on any nationally advertised brand of appliance?

MR. LAWSON: Well, it has not been our tactics to use that type of advertising. I know that it has been used.

MR. WICKWIRE: I am not talking about advertising, I am thinking about the idea that has been suggested -- I will put it this way: That because a nationally advertised brand appliance can be bought at a reduction in price that the customer thinks that that article has been greatly cheapened and is not as good an article as it otherwise would have been. Can you tell us **your** experience with reference to that?

MR. LAWSON: Well, my personal experience has been that the customer appreciates very much an opportunity of obtaining that appliance at that price. It has popularized the item and they only wish it could be obtained in broader scope throughout the City, let us say, or throughout the province at that same price.

MR. WICKWIRE: Your experience has been that it has not hurt the goodwill of that particular product?

MR. LAWSON: No. For example, our advertisements are read in all parts of Ontario - advertising in the daily papers - and we receive

letters every day in volume from all over Ontario asking to purchase the various products advertised.

MR. WICKWIRE: Do you maintain any service staff in connection with your establishment?

MR. LAWSON: Yes, two in the service department. The field men are on the go all day long with trucks which carry approximately \$2,000.00 worth of equipment. They are going out at all times and servicing electrical products, on which we do not pay service to the manufacturer. That is, we do pay to certain firms - that is, the manufacturer - to service his own products. Those which are not paid we do the service ourselves.

MR. WICKWIRE: Does that apply to all appliances that are sold in your store?

MR. LAWSON: All appliances, they are serviced.

MR. WICKWIRE: What do you find is the biggest --

MR. FAVREAU: May I interrupt?

In the case where you must service the appliances yourself do you have any system whereby you sell your service by way of a policy, or otherwise, or is it included in the sale price?

MR. LAWSON: It is always included in the sale price, sir, with the exception of television; and it has always been the policy in television, by the manufacturer as well as the dealer, that the manufacturer's warranty covers

the parts and there is a charge for the service - that is, the home service to the set. That has been the general policy of most appliance companies in Toronto, unless it is included with the television. \$55.00 for a twenty-foot aerial, which includes home service on the television set and one year warranty on the aerial.

MR. WICKWIRE: It has been suggested to us that the reason people like yourself who have cut the price to make a sale is because other people have done the creative selling, both the manufacturers and the retailers who wish to maintain the suggested price, that you pick the apples from their orchards?

MR. LAWSON: Well, I would say the biggest portion of advertising, at least here in Toronto, is done by the large dealers who I term discount houses, selling below the suggested retail price set by the manufacturer, which I deem is an unrealistic price. This terrific amount of advertising which, as I say, greatly out-numbers the amount of national advertisement placed in Toronto by the name brand manufacturers, that this promotional advertising has enhanced the product and increased the sale of these articles to the point that we find, and other dealers I have talked to have found, that the customer will even go to his local dealer and ask him if he could procure that item at that same price as advertised by the dealer putting on the promotion.

MR. WICKWIRE: Your experience, in other words, has been that customers do shop?

MR. LAWSON: Definitely, shop.

MR. WICKWIRE: And that the price is the biggest factor in moving an article?

MR. LAWSON: At the present time and in the last several years it has been the biggest item.

MR. WICKWIRE: What was your policy, Mr. Lawson, when it was possible for a manufacturer to maintain the resale price, and I understand some of them did?

MR. LAWSON: Well, before the law was passed prohibiting the setting of price we found it was a rather chaotic condition, and I think that would exist again if the law was repealed. There is always the preferred dealer in times like that.

MR. WICKWIRE: Will you give us an example of what you mean by "preferred dealer"?

MR. LAWSON: Going back to when I was working for this large electric manufacturer, I can remember one of the sales managers telling me that we must have one or two of the large boys in the field to whom we could give the deals, to whom we could unload. As every appliance dealer knows, the way he makes his money is on the large deals, these appliances which can be bought in large quantities at low prices and sold to the public at low prices.

MR. WICKWIRE: Did you find large deals were available to you at that time?

MR. LAWSON: No, we had to convince the manufacturers as we grew that we should be included in the better deals so that we could properly merchandise. Since it was our basic policy to merchandise at a low price and appeal to the new home owners and to the younger ones who were just starting homes, it was very tough sledding to convince the manufacturer that we should be merchandising at a lower price.

MR. WICKWIRE: You are suggesting, I take it, it was difficult for you to convince the manufacturer that you could move his products in sufficient volume?

MR. LAWSON: That is right.

MR. WICKWIRE: To give you a preferred deal, as you call it?

MR. LAWSON: That is right.

MR. WICKWIRE: Do you know whether deals were available for certain people at that time at greatly reduced price?

MR. LAWSON: Oh, time after time we ran up against this very thing, that we were trying to compete against large dealers, or some dealers, who were, as the manufacturers called them, the white haired boys. It was practically impossible in those days to meet their prices because of special deals they had been given.

MR. WICKWIRE: Then, was there another phase, such as trade-ins and so on, in order to get around the maintained price?

MR. LAWSON: Well, of course, those were preferred by the manufacturer, ambiguous phrases - and I see they still suggest that - such as king size trade-ins, etc., rather than a specified amount of trade-in.

MR. WICKWIRE: Would you give us an example of the king size trade-in?

MR. LAWSON: Well, it is so ambiguous I do not know that I can answer it myself. It has been our policy to give the exact trade-in that we will allow on certain appliances at that time. This dates back to before the prohibition of setting prices by the manufacturer.

MR. WICKWIRE: It was possible under a system whereby retail prices were maintained for a customer to purchase a price maintained article at less than the price maintained price?

MR. LAWSON: Yes, but it was not very prevalent, it was very much in the minority. The dealers who practiced it to the greatest extent were the ones who obtained in some way a special deal, and usually the manufacturer would look the other way. If a smaller dealer or an average dealer practiced the same thing he would get severely reprimanded. I was forever being called on the carpet by various manufacturers for doing that.

THE CHAIRMAN: Do you mean these large or favoured dealers, who you say obtained special deals, would nominally maintain the suggested

retail price but allow a very large or excessive turn-in value for things they took in for part payment?

MR. LAWSON: Yes.

THE CHAIRMAN: And thereby give a real discount?

MR. LAWSON: Yes. They might use tactics such as that but the more common practice was to have erroneous advertising, mutilate pictures, photographs of the name brand item. The picture of the model in the newspaper advertisement would be mutilated by putting a large banner through it or cutting off a corner so it could not be recognized, supposedly, by the rest of the dealer organization. The large promoter would sell this particular item, which he obtained at a special or advantageous price, and consequently the average dealer could not compete.

THE CHAIRMAN: We had a suggestion the other day that sometimes, in order in effect to allow a cut-price, a dealer might allow a trade-in value of, say, \$50.00 for an old broom - I think that was the example given to us. Did you run across that?

MR. LAWSON: That was very much in effect at the time this price-cutting began. The manufacturer at that time was attempting to hold the line and the only way to get around holding the line by the dealer was to advertise these terrific trade-ins on old shoes, brooms, etc. However, that bears no weight now. The public wants

the item and they do not want to be hoodwinked, they want it as a cut-price.

THE CHAIRMAN: They do not want any suspicious trade-ins?

MR. LAWSON: They think you are under-estimating their intelligence when you advertise these fake trade-ins.

MR. WICKWIRE: Now, Mr. Lawson, the other day there was produced before the Commission exhibit T-11, which I think I will have you verify. It is a copy of an advertisement which appeared in the Toronto Daily Star on Thursday, April 8th, 1954. Will you look at it and see if you can identify it as your advertisement?

MR. LAWSON: Yes, that is one of our ads. We ran a number of similar ads on large promotions at the time of our anniversary sale, and we had all these products.

MR. WICKWIRE: I draw your attention particularly to two different sets, General Electric television sets. Do you see them there?

MR. LAWSON: Yes.

MR. WICKWIRE: Perhaps you will read out for me now they are distinguished? The one on the left is a 21" black daylight picture tube and the one on the right is a 21" aluminized tube. Does that identify them?

MR. LAWSON: That is correct.

MR. WICKWIRE: Illustrated in the advertisement are two models of each machine. Is that

correct?

MR. LAWSON: That is correct, sir. The one above has three.

MR. WICKWIRE: The one above is a different make, what is the one above?

MR. LAWSON: The one above is ultra vision with doors, aluminized tube.

MR. WICKWIRE: Now, it was suggested to the Commission that your appliance store was shopped and that, as far as those four G.E. models are concerned which are pictured in the advertisement, that they had sold tags on them and you did not have any others?

MR. LAWSON: When this particular item was put on the sale, these General Electric televisions were put on sale, we had procured from the manufacturer, or had on hand, a fair-sized stock of these items. We had approximately twenty-four, a couple of dozen General Electric sets, and considerably more Northern Electric television sets, which are made by General Electric. They are identical in every shape and form, the knobs might be a little different shape, but that is the only deviation; outside of that the sets are identical in every way. We had both General Electric and Northern Electric sets on our floor and we had a large volume of them. The sale commenced at noon on the 8th for this particular item - that was on a Thursday, and by Friday at 7.45 we were absolutely

sold out. In the interim of that day and the next day, Friday, there was just dozens and dozens and dozens of people come into our store, it was full all the time, and the salesmen were taking sets off the floor and also taking them out of stock - that is the card index system in the office. So, there would be both General Electric and Northern Electric sets on the floor, and there were also other sets, R.C.A. Victor sets on sale there, an Admiral set, a Fairbanks Morse set.

MR. WICKWIRE: It was also suggested that the same shopper returned to your establishment ten days or two weeks later and the sale tags were still identified with the names of the people who were on them when he had been in your shop earlier. What do you say about that?

MR. LAWSON: I cannot see how it would be true. There might be, in some instances, certain names that would remain on the floor for as long as two weeks. The reason being that the customer picked out a certain shade of wood they liked and that would not be delivered, they were not ready, they just wanted to procure the item at the sale price but it would not be delivered for several weeks. In the main most of the television sets were shipped out in the next few days. We still had some of these sets - both General Electric and Northern Electric - for a considerable time after the sale. As a matter of fact, on our floor at the present time there is

an ultra vision set which can be had at exactly the same price as those in the advertisement. It could be at a lower price than advertised here.

MR. FAVREAU: You have the names of those to whom you sold these sets and they could be traced by your delivery slips?

MR. LAWSON: We could attempt that, sir. I do not see why it could not be.

MR. WICKWIRE: Would the Commission --

MR. FAVREAU: So far as I am concerned I would be interested if you could trace them and send a list to the Commission.

MR. WICKWIRE: What is your advertising policy generally with reference to cut-rate items?

MR. LAWSON: Our policy is to maintain approximately the same mark-up on all our appliances and sell them in volume and in cartons or crates as the case may be.

MR. WICKWIRE: Would you care to suggest to the Commission what your mark-up is?

MR. LAWSON: The mark-up is approximately 10% at the present time on electrical appliances.

MR. WHITELY On selling price?

MR. LAWSON: Yes, 10% of the suggested retail price.

THE CHAIRMAN: You mean 10% below the suggested retail price?

MR. LAWSON: No, 10% of the suggested retail price above our cost. It figures out to approximately 17.something of cost price.

THE CHAIRMAN: Your mark-up on your laid down cost to cover overhead and allow something for profit is 15 to 17%?

MR. LAWSON: That is correct, sir.

MR. FAVREAU: If your cost is \$150.00?

MR. LAWSON: It would be 15 or 17% of the laid down cost.

MR. FAVREAU: If your cost is \$150.00 and your suggested list price is \$250.00, would you take \$25.00 mark-up and sell at \$175.00?

MR. LAWSON: Our prices run about 15%, which in most cases will run about 10% of the manufacturer's suggested retail price.

MR. WICKWIRE: You are making a profit, paying your way?

MR. LAWSON: Yes, sir.

MR. WICKWIRE: We have heard some discussion here, Mr. Lawson, about a type of advertising called "nailed down". Do you know to what I refer?

MR. LAWSON: Yes, sir. It was very prevalent, it has been in existence and still is, but it was very prevalent at the turn of the year. I think the biggest instigator of that type of promotion is the manufacturer himself.

MR. WICKWIRE: Why do you say that?

MR. LAWSON: He is trying to get around by devious ways this price-cutting proposition. It is the tactics used mostly by dealers who would like to obtain the long end

of the profit on every item, advertise one item and sell something else at a higher mark-up. The manufacturer has in numerous cases - and, of course, has approached us on quite a few occasions - approached a dealer with odds and erds - 2 of this particular model television set, last year's models, 2 of something else, 2 damaged sets, 2 factory returns - and will pay co-operative advertising on these items.

MR. WICKWIRE: You and the manufacturer together?

MR. LAWSON: Yes, the dealer and the manufacturer will get together and the manufacturer will pay 50% of the promotion r advertising of these particular sets that he has given him for that week, as it were, and he has to buy in quantity something else and try to push that.

MR. WICKWIRE: It would be something else from the same manufacturer?

MR. LAWSON: Something else from the same manufacturer, but usually an entirely different model - in most cases a higher priced model - than the one advertised. It is the way the manufacturer has been trying to keep everything in line. He does not have the other dealers breaking out with price-cutting.

MR. WICKWIRE: Now, has that sort of thing happened to you on many occasions?

MR. LAWSON: On many occasions I would say they have approached us with that thing. It

is not our basic policy at all to do that type of advertising. We definitely prefer to advertise exactly what we have and sell it in very large volume.

MR. WICKWIRE: Have you ever done this type of advertising or followed this type of policy which you have been discussing?

MR. LAWSON: The only instances I can think of where we have is where the manufacturer has procured for us exactly the same item with a varying minor change which would be of benefit to the customer. In other words: They bring us 2, 1953 models and we use a photograph of the 1953 model in the paper and sell a 1954 model when they come into the store. In other words, the same thing only a better one.

MR. WICKWIRE: You say this request has been made to you on several occasions to do this and on some occasions you have followed this policy?

MR. LAWSON: That is right.

MR. WICKWIRE: Have these requests come from just one or two of the manufacturers in whose products you deal or is it fairly general among the manufacturing industry?

MR. LAWSON: It is a fairly general practice amongst the manufacturers in order not to start price-cutting in general amongst their dealers; but some firms go in for it stronger

than others. What I mean is, some manufacturers leave it up to the dealer, they just more or less condone it, while other manufacturers will instigate the whole thing, they will incite the type of promotion by supplying the set and suggesting prices, etc.

THE CHAIRMAN: Mr. Lawson, just one further question: You say in some instances you might have an arrangement of this kind with the manufacturer in which a 1953 model was advertised and when the customer came in you sold him a 1954 model. Would that 1954 model be sold at the same price at the 1953 model was advertised?

MR. LAWSON: That is correct, Mr. Commissioner. In some instances we have sold it at less than that. It is a halter on the appliance dealer. It is the bit they put in our mouths to hold back those prices, for example. If it is set up by the manufacturer they may even supply the item or suggest the dealer look for one in his warehouse, the item to be used for a promotional advertisement, suggest the price he can merchandise the item at and then, of course, sell his 1954 model. The dealer, however, in most instances, would like to go appreciably below even the price suggested by the manufacturer. The reason for the manufacturer setting the price at that particular level is that he thinks that type of promotion is only worth that much. That is, that he knows that the dealer set-up in general

will obviously know that it is a type of promotion and they, too, will want to get in on the same thing. It is not done with every dealer in the organization. It might be a promotion of one particular dealer in the City of Toronto and one in Hamilton, or some other place and they, therefore, like to set the price a little high, even though it is that type of promotion. The dealer would just as soon cut the price very low and move them in volume.

THE CHAIRMAN: Is the effect of this that a 1954 model which has not been advertised is sold for the lower price, which might be regarded by the manufacturer as reasonable for a last year's model? Is that what it amounts to? In effect you cut the price on the 1954 model but you advertise the 1953 model?

MR. LAWSON: 1953 model. That is absolutely correct.

MR. WICKWIRE: Thank you, Mr. Lawson.

THE CHAIRMAN: How soon do you think you can let us have the list of these purchasers?

MR. LAWSON: Oh, probably several days' time.

THE CHAIRMAN: Is there anything you would like to add, Mr. Lawson? I think we have finished all the questions we have.

MR. LAWSON: I would just say in closing that I do not think loss-leadering is the real issue at all. The only thing that has evolved

that is of great concern to the dealer in general is the type of advertising that has been in effect in the last year or so. Some of it is ambiguous advertising. I think that that is not from the loss-leadering situation but more from the point that the law that is in effect now is not sufficiently enforced.

THE CHAIRMAN: You mean with regard to fraudulent advertising?

MR. LAWSON: That is correct. That is not sufficiently enforced with the manufacturers. That would clean this whole thing up. If that law were enforced and there was absolute free trade in the retailing of appliances and household products the dealers would be only too glad to bring out in their advertising the exact products they have. Not 1953 models, or comic advertisements, or mutilated goods; but bring the exact product into the ad and the price at which they want to sell it.

THE CHAIRMAN: Your belief, I take it, is that the dealer should sell at his price without reference to a suggested price by the manufacturers?

MR. LAWSON: That is right.

THE CHAIRMAN: And should advertise the goods he has for sale at the price he is willing to sell them at and in the condition they are?

MR. LAWSON: That would be far better for

the consumer; far better for the manufacturer.

The public would certainly appreciate it.

THE CHAIRMAN: Have you anything further to add?

MR. LAWSON: No.

THE CHAIRMAN: Thank you very much, Mr. Lawson, for coming this morning.

(page 1050 follows)

June 4, 1954.

Delegation from: CANADIAN HOME LAUNDRY MANUFACTURERS ASSOCIATION.

Comprising: Mr. C. B. Pearce,
Manager of Laundry Equipment
Section for Canadian Westinghouse
Company.

Mr. A. Bloom,
Vice-President of Coffield Washer
Company.

Mr. R. Neal,
Manager, Hamilton Branch,
Canadian Manufacturers' Association,
and Secretary of Canadian
Home Laundry Manufacturers'
Association.

Mr. G. Campbell,
General Sales Manager,
Easy Washing Machine Company.

Mr. G. Beatty,
Vice-President of Beatty Washing
Machine Company.

Mr. C. Raymond,
General Sales Manager,
Brantford Washing Machine Company.

THE CHAIRMAN: Gentlemen, the next presentation we have this morning is from the Canadian Home Laundry Manufacturers Association. Will you come forward, gentlemen.

MR. PEARCE: Mr. Chairman, I have learned you like to have the delegation introduced so you will have some idea of who we are.

THE CHAIRMAN: There are two or three reasons, and the reporter needs it in taking down the remarks by each person.

MR. PEARCE: My name is Charles B. Pearce; I am manager of the Laundry Equipment Section for the

Canadian Westinghouse Company. I have had that position for eighteen years and I have been in the washing machine business for 28 years.

On my right is Mr. Bloom, who is Vice-President of the Coffield Washer Company in Hamilton. Mr. Bloom was born in the washing machine business, his father was in it before him, and I worked for him.

The next gentleman is Mr. Russell Neal, who is manager of the Hamilton Branch of the Canadian Manufacturers' Association and Secretary of Canadian Home Laundry Manufacturers' Association. I should say at the present time I am president of the Canadian Home Laundry Manufacturers' Association.

The next gentlemen is Mr. Gabe Campbell who is General Sales Manager of the Easy Washing Machine Company in Toronto, and who was with Beatty's for 27 years. Mr. Campbell has been nearly 30 years in the washing machine business.

The last gentleman is Mr. George Beatty. I do not think anyone needs to have any amplification of the name Beatty in the washing machine business. Mr. Beatty is the second generation and the third generation is now in the business and the fourth is coming along. He is Vice-President of the Company.

I would like to say further that the Canadian Home Laundry Manufacturers Association represents all manufacturers producing washers in Canada and I think from the record that you have that you will recognize that the four men and our secretary really know the washing machine business and have spent lifetimes in it and we

are some of the men who have helped to build it to where it has been.

The Chairman of our Committee on Resale Price Maintenance is Mr. Bloom, who will now, with your permission, read our brief.

THE CHAIRMAN: I would say, Mr. Bloom, if you wish to make any comments during the course of reading it you may do so from time to time as you go along, or at the end as you see fit.

MR. BLOOM: Mr. Chairman, and gentlemen, we have a slight correction on page 2 of the brief that was submitted to the Commission earlier. I have extra copies which our secretary has just handed me. Would you like those, sir?

THE CHAIRMAN: Yes, we might better have those.

MR. BLOOM: In presenting this brief of the Canadian Home Laundry Manufacturers' Association, we will attempt to clarify to some extent, the confusing issues that have arisen, and briefly supply information which we believe will be useful to the Commission when it comes to consider the chaotic conditions brought about by so called Loss Leader practices under present legislation.

The term "loss leadering" is undefinable in that it can apply to any number of circumstances pertaining to the marketing of a product. We believe that a "loss leader" as it applies to this Industry, can constitute an item of home laundry equipment, marketed at a price either above the actual manufacturer's price to the distributor or retailer, or below the actual invoice

price at any stage of the retail sale, in either case at a substantial reduction from the selling price of the product, suggested by the actual manufacturer. Under such competitive conditions, the same product can, and at present is being sold at arbitrary selling prices chosen with complete disregard of the actual purchase price from the original supplier, and consequently, has no relation whatsoever to either manufacturing costs, overhead, advertising costs, or fair profit margin. This we submit, might be considered what is commonly termed "loss leadering".

The prohibition of resale price maintenance under the Combines Act, we believe, was prompted as a measure to control the increase in cost of living brought about by the general conditions of insufficient supply of merchandise to meet normal market demands, plus the surplus availability of purchasing power. We submit that under present day conditions, such a situation no longer exists and that Canadian industry is now, and has been for some time past, producing to a much reduced market requirement. Under such conditions, there is no room for restrictive practices which interfere with the normal flow of merchandise and the natural consequence of supply and demand.

The result of no price maintenance is to destroy the basis for list prices and discount procedures which has resulted in decreasing the volume of business done, bringing about unemployment in the Industry, leaving the public confused, and placing the capital investment and business good-will of manufacturers, wholesalers and retail

merchants in jeopardy.

As an example, according to published information by the Dominion Bureau of Statistics, in 1921 a total of 24,892 washing machines were produced for a total value of \$964,662.00. This quantity of production was consistently increased until 1950 when a total of 300,798 washing machines were produced for a total value of \$29,162,241.00. This shows a natural growth of one product only, manufactured by the Home Laundry Equipment Industry in Canada during a period of years when manufacturers' list prices and control of marketing conditions went unhampered. During the years 1951 and 1952, under the Restrictive Trade Measures of the Combines Act, there were 245,110 washing machines produced for a value of \$25,845,908.00 and 259,253 units produced for a value of \$27,319,313.00 respectively. In 1953 our own Association statistics show a production of 249,745 washing machines. I might say, there, Mr. Chairman, that we do not have the value for the 1953 figures because we do not show the values in our industry. I am showing here in 1952 the volume of production was considerably reduced in units as compared to 1950 and that there was a further reduction in units in 1953 over 1952. The experience of the two years under this legislation indicates clearly the reduction in volume of units produced and sold as compared to previous years, when complete freedom of distribution was permitted. The effect of this legislation as shown, is all the more remarkable when one considers that the industry had planned and fully

expected increasing production and sales during this period. The above statistics show that this trend was reversed at the inception of the legislation producing a decrease in sales rather than an anticipated and planned steady increase.

MR. WHITELEY: I do not want to interrupt you but I was just wondering if you could supply any information to show if the decrease is greater in areas where the price cuts have prevailed or not.

MR. BLOOM: Our industry figures are only supplied geographically and we wouldn't have any information to show the number of sales that went into a particular area.

MR. WHITELEY: Even geographical figures may be of some help.

MR. BLOOM: We could supply geographical figures but we could not supply local areas.

THE CHAIRMAN: You do it by provinces?

MR. BLOOM: Yes, sir.

THE CHAIRMAN: We have been told with regard to many types of appliances the loss-leader effect has been mainly observed in certain areas like Toronto, Winnipeg, Vancouver and Montreal, but not in Alberta, or very little, and in the Maritimes not very much. If we could get the figures by provinces we could see how the whole picture ties up.

MR. BLOOM: Mr. Campbell just points out we have an 11 percent decrease for the first four months of this year.

THE CHAIRMAN: Has the percentage been the same

throughout the country or greater in different sections?

MR. WHITELEY: We do not want to interrupt the presentation of the brief, but will you just keep that in mind.

MR. BLOOM: Yes.

The pioneering of any products has in the past been the undertaking of the smaller appliance dealer outlet. The present legislation has introduced such a chaotic condition in the field of distribution that these dealers can no longer afford to pioneer any merchandise such as dish washers, dryers, etc., which at the present time are being developed as new products. The cut price outlets only take advantage of selling well accepted products as loss leaders. If this industry is to continue the growth developed in the past, it must have a suitable merchandising system for the introduction of newer and more modern appliances.

We submit that in so far as this industry is concerned, the prohibition of resale price maintenance has failed to accomplish the purpose for which it was intended. The loss leader practices that exist in this industry at present have not reduced the cost of living, which has on the contrary risen steadily during the period that this legislation has been in force. Unemployment has also increased rapidly during this same period. One basic reason can be cited for the general confusion existing in the minds of the public when they are confronted with so many different price tags on the same merchandise; they hesitate to purchase for fear that the price they are asked to pay be too high, as

they see the same article offered at different prices if not necessarily sold. The consumer expects to find the product of a reputable manufacturer sold at the same price everywhere.

In order for a local merchant to advertise at local advertising rates in a newspaper, the manufacturer of his product under contract, must buy a specified amount of advertising in that newspaper at a national rate. Existing conditions, allow the local dealer to cut the suggested retail price so that various prices would appear on the same merchandise within the same newspaper issue and yet the manufacturer, who in this instance, is expected to contract for national advertising, is left powerless to regulate the situation. The cut price outlet, therefore, can nullify the power of this advertising and convert the sale to another competitive product on which he makes a higher margin of profit, thus taking undue advantage of the purchaser. The manufacturer, or supplier is powerless under present legislation, to prevent this condition, and is literally forced by law to condone such unscrupulous and unfair practice. Furthermore, if the manufacturer or distributor has a policy of cooperative advertising allowance, he must pay for such unscrupulous advertising and cannot refuse to do so because the suggested or fair trading price is not maintained.

The effect of such practices, if continued, will tend to confine distribution into the channels of the opportunist outlets, who cannot be regarded as having any stability or permanency, thus ultimately eliminating

smaller merchants, wholesalers and manufacturers.

This would in effect tend to produce a restrictive cartel in the industry which, we must presume, it was the Government's original intention to prevent.

Due to the condition of world markets and the monetary exchange situation, the percentage of exports as compared to the total volume of production of the products of the Canadian Home Laundry Manufacturers is very limited, whereas the imports of such products are completely unrestricted from entering Canadian markets.

Under complete freedom of manufacturing, supply, and marketing, this industry can better serve the public and compete with foreign imports than is possible under restrictive trade practices which exist. This contention is borne out in the reports of the Dominion Bureau of Statistics on imports for the year 1950 as compared to 1952 and 1953. Imports of domestic electric washing machines, which in 1950 accounted for less than 1 percent of the Canadian market, in 1952 rose to more than 5 percent. Imports of this product in 1953 were more than doubled as compared to 1952 and statistics for the first two months of 1954 show a continued increase in imports.

The Canadian Home Laundry Industry strongly urges that the Combines Act be amended to allow complete freedom of trading practices in our industry. We feel that unrestricted competitive manufacturing, distribution and marketing can best serve the public interests; can better maintain Canadian employment; can best support Canadian Govern-
ment

through taxes; will remove the uncertainty created in the public mind, and once more induce the public to buy with confidence the products that they want and need and in which they will enjoy pride of ownership.

This Industry fully concurs in the opinion that Canadian Government should take all possible steps to prevent and prohibit collusion and combines in industry, which would be detrimental to the consumer, but submits that a responsible manufacturer should be free to maintain a fair selling price on his products. A return to free competitive selling under proper business ethics would not constitute any collusion or combine.

This Industry would respectfully urge the Commission to review the restrictive trade practices legislation and remove the severe restrictive measures of the act for the benefit of all Canadian Industry and the Canadian consumer and public.

THE CHAIRMAN: Mr. Bloom, do you wish to make any comments?

MR. BLOOM: There are instances in newspaper advertising which I have brought along to indicate the general confusion which we believe has existed.

MR. PEARCE: May I interrupt for just a moment. I would like to apologize for one of our members who came late, and introduce him now. This is Mr. Charles Raymond, who is General Sales Manager of the Brantford Washing Machine Company. The Brantford Washing Machine Company have been in the business for 35 years.

MR. RAYMOND: I am sorry to have been late, Mr. Chairman.

THE CHAIRMAN: Not everybody can get away at the same time.

MR. BLOOM: We have some advertisements here which I have chosen and which I think to be rather indicative of the confusion that has been created by this type of fictitious advertising. Would you like us to submit them at the present time?

THE CHAIRMAN: I think they may be useful to us. You can mark them as exhibits and have them filed.

MR. BLOOM: I have chosen this one particular issue of the Toronto Daily Star of Tuesday, May 25th. There are three full page advertisements of three dealers; on page 9 the New Era Home Appliances, on page 11 George's and on page 13 Better Appliances. These three advertisements appear in the Toronto Daily Star of May 25th, 1954 in that sequence. It shows practically all the major appliances including washing machines but it is rather unique inasmuch as there is one part of the first ad of New Era showing an automatic clock controlled range at a big saving at \$199.00 and two pages over there is the exact cut, it cannot be confused, the identical mat apparently being used for the Birthday Sale price by Better Appliances of \$179.00 or \$20.00 below the other price on exactly the same merchandise. I am just indicating the type of advertising and this advertising also, of course, includes washing machines. New Era shows an Inglis Washer with no established list price, but selling at \$129.00.

MR. WHITELEY: Do you mean it has none or they do not name it?

MR. PEARCE: They do not name it. There is no established retail price, it is just a selling price of \$129.00.

THE CHAIRMAN: The ad only contains New Era's selling price.

MR. PEARCE: That is right.

MR. WHITELEY: From what we heard previously that would be regarded as less offensive type of advertising. When you commenced you said you were going to show these as examples of fictitious advertising.

MR. PEARCE: The next page of George's ad shows a Connor Washer, \$189.00, now only \$109.00.

THE CHAIRMAN: Do you identify it as being the same washer in both ads?

MR. PEARCE: No, sir.

MR. WHITELEY: What do you wish the Commission to draw from the examples you are giving?

MR. PEARCE: The reason I submit these three ads is to show the same cuts of a range at two different prices in the same issue.

I am only using that to illustrate the confusion that must exist in the minds of the public.

MR. WHITELEY: That confusion may run over into the public's appreciation of home laundry equipment.

MR. PEARCE: It does. We have a similar type of unfair practice or unscrupulous type of advertising in issues previously and Mr. Campbell of the Easy Company, who are involved in this particular situation, wishes to talk on that situation as it pertains to the washing machine industry.

THE CHAIRMAN: Pages 9, 11 and 13, tear sheets from the Toronto Daily Star of Tuesday, May 25, 1954, will be accepted and filed together as Exhibit T-14.

---EXHIBIT T-14: Three tear sheets from Toronto Daily Star dated May 25, 1954.

MR. BLOOM: Mr. Campbell, I think, would like to talk on this issue.

MR. CAMPBELL: Yesterday I heard a very good case brought by C.E.M.A. and I don't know why C.E.M.A. have to go into our business to prove a case, and as usual when you are quoting something you do not know about you get things wrong. I have asked Mr. Simpson to send you a correction as to page 3 of their brief. On page 3 they point to an example of Easy, and say the manufacturer's price was \$71.75. If my competitors thought we could sell washing machines for \$71.75 they would be hiring me and my production department. It should read the dealer paid \$80.50. The advertised price is \$89.00, and it wasn't \$89.00, it was \$79.00 and the suggested list price was \$109.50. So, as you pointed out very correctly, it was a large margin.

MR. WICKWIRE: I think it was 90 percent on their figures.

THE CHAIRMAN: That is just a little confusion thrown in from another source.

MR. CAMPBELL: Now, we come along at the end of the year with new models for 1954 and we happen to have quite a stock on hand of what we call promotional models. We have suggested a list price on it of \$109.50

and we brought the suggested list price down to \$99.50 and then we reduced the price to clear our stock. Now, here is what happened, we offered that price to all dealers all over Canada.

THE CHAIRMAN: What was the price?

MR. CAMPBELL: \$80.50. We offered that price to wholesalers.

MR. FAVREAU: That was to wholesalers?

MR. CAMPBELL: We operate our own wholesale division. There is no room in the washing machine business for a distributor. There is no room for them except in the small town trade, particularly in Western Canada and small places, but in large centres, no. Now, we brought the washer out at a suggested price of \$99.95, or \$99.50, and on January 22nd, Danforth Radio advertised the washer at \$99.95 and it sold very well. On January 27th, Caplan's came out with the same washer at \$89.00.

THE CHAIRMAN: How did they do that on that particular model?

MR. CAMPBELL: They didn't sell a lot of those models but they sold a lot of other models.

MR. WHITELEY: Did they state in the ad that there was any limit on the number?

MR. CAMPBELL: No.

THE CHAIRMAN: Did they have a considerable number of those machines?

MR. CAMPBELL: Not a large quantity; there wasn't a large quantity involved in the whole deal.

THE CHAIRMAN: You don't happen to have the number

they had?

MR. CAMPBELL: I could get it, but we are not talking about thousands, we are talking about hundreds.

MR. PEARCE: Mr. Chairman, I might say while around this table we all appear to be very friendly, this is a cut-throat business. We are out to get all the business we can and we are vigorous competitors and I hardly think it is fair to ask Mr. Campbell to tell his competitors how many washers he sold to Caplan's because we also sell Caplan's. Let us say we cut each other's throats in a very friendly way.

MR. CAMPBELL: The point I am making here is that Danforth advertised at \$99.50 but Caplan cut the price \$10.00 and Caplan was making a profit of the difference between \$80.50 and \$89.00. Mr. Lewis didn't like it and he came out on the 2nd of February, two days later, with a price of \$79.00.

THE CHAIRMAN: He would be losing \$1.50.

MR. CAMPBELL: Yes.

THE CHAIRMAN: He would get rich on volume, I suppose.

MR. CAMPBELL: The point I want to make is this, I wish one of you gentlemen had been sitting where I was sitting the day after this ad appeared. This promotion was going very well at \$99.95, they were all selling well, but the telephone rang off the wall for two or three days because people were walking in and wanting cancellations and I think one dealer sold four and three people came back and got \$10.00 when Mr. Caplan advertised and all came back and got another \$10.00 back when Mr. Lewis

advertised.

The point I am making is, this ad put a stigma on Easy because we had dealers wanting us to sell them. I would say we lost 30 dealers over the transaction and what could we do about it. I was almost ready to get on the train and go down and ask Mr. Macdonald what we should do. We had in the City of Toronto, I won't reveal to my competitors who, but I will tell you name after name of good accounts that were lost.

THE CHAIRMAN: You make me feel pretty blue because I got one of your washing machines not very long ago for \$200.00.

MR. PEARCE: We also sell floor polishers and an employee came in and asked me to sell him one and I told him to go downtown and buy it from one of the shops there who were selling it for less than I could. If anybody calls me up and wants a wholesale price I tell them where to go. If I sell a friend at wholesale price he wants a lot of extra service and he can go downtown and get it.

Now, in the brief here we suggest the present situation prevents the development of new products. I have been in the washing machine business for 30 years. When I started in the washing machine business and we had washing machines, we would sell them to the dealer. We would go back in three or four month's time and that washing machine would be covered with harness in the back of the store and we went so far as developing our own stores. Now, we have new and exciting products in our business today just as revolutionary as going

from a washing board to a washing machine. This automatic washer and dryer is stymied and I do not think it is going to develop. We have to spend many hundreds of thousands of dollars to develop tooling and right now we are at the cross-roads and don't know what to do. I would like to ask this man who was here this morning how many dryers he has sold. If you haven't a dryer in your own home and you put one in, you will say it does as much as a washing machine for your wife.

Now, last year in the United States there was 3,500,000 washers sold and 1,975,000 were automatic washing machines. The automatic is just as revolutionary as going from the washboard to the washing machine. In Canada we sell 257,000 and only 32,222 or 12.3 percent were automatic and in the United States it was 56.4 percent.

Now, with regard to dryers, every home that has a washing machine is a prospect for a dryer. If they wash they have to dry their clothes. In the United States last year there were 685,000 sold or 19.5 percent of washer sales. In Canada we have 15,345, or 5.9 percent of washer sales.

Now, there are two new appliances we think under the present legislation are going to be stymied because who is going to invest money to go out and promote the sale and sell you in your home and tell you that you should have a dryer.

THE CHAIRMAN: I suppose the dryer has been introduced in Canada somewhat later in the day.

MR. PEARCE: Yes.

THE CHAIRMAN: There will be some backlog to be expected.

MR. PEARCE: Yes, the American industry came along a little faster. I would say in Canada until we get 300 to 400 thousand dryers in use it is not going to be an item for ready sale. Now, I would like to see a dealer who will go out and develop a new product under present conditions. Nobody is going to go out and try to sell dryers and automatic washers because in that new type of business you have to have a margin of 30 percent.

MR. FAVREAU: Do you really think you need big promotion?

MR. PEARCE: Have you a dryer in your home?

MR. FAVREAU: No, I don't.

MR. PEARCE: Because somebody hasn't come and sold you one.

MR. FAVREAU: I can't afford it.

MR. PEARCE: The reason you can't afford it is that nobody yet has taken the time and trouble to tell you how.

MR. FAVREAU: I am not saying the prices are too high. I don't know about that but I believe in the case of dryers as soon as the prices are such that people can afford them the sales will be made quite readily.

MR. CAMPBELL: If you advertised dryers today at \$95.00 they wouldn't sell. Price is not a factor. We have heard them talking about air conditioners. Last year we had salesmen going out and doing a pretty

good job but when ads came out at prices we couldn't import them for, it just discouraged the development of the business. As it is pointed out in our brief, there is no way of developing the sale of new products under present conditions.

MR. PEARCE: Might I add something to that.

Two years ago we put on a selling campaign with our dealers encouraging them to put a Laundromat and Dryer in the store and invite people to bring their washing to the store to be washed and dried. In other words, the dealer would prove to them what it would do because people didn't believe it until they saw it. They hired high school boys who would take a dish towel saying "Bring your washing to our store", and when they saw washing on a line they would pin it to it. We had a dealer who in three months sold 65 pairs of Laundry Twins. I talked to those men a couple of months ago at a sales meeting and they said as far as they were concerned, they were not in it. I said, "Why, you were doing wonderfully?". They said they were selling them at regular prices and could afford to do the promotion but it finally got so bad a woman would bring in her clothes, and she would say "I will let you know" and they said they would get in their car and follow this woman from the store on Yonge Street to George's who was selling them at a cut price.

We talked to George about dishwashers, and that is an item that has to be promoted. How many men in this room have dishwashers? Now, no one will have dishwashers until the salesman goes in and convinces them they

need a dishwasher, and that costs money. We go to George, who is a big dealer, who bought half a million dollars worth of goods and sold them at cut prices. It was suggested we cut him off. Now, how do you cut off a dealer that buys half a million dollars worth of goods. This is what George said: "There is no demand for dishwashers. Let the rest of the mugs build up the demand and I will cut the price and sell them".

Here is a letter dated January 28th, 1954:

" We are enclosing card, would you see that it gets to the proper department.

I am writing this for my husband as we are greatly perturbed by the decrease inside of one week of our washer and dryer, and we feel so strongly about this that we certainly would never again buy a Westinghouse product when the public is so poorly protected. We bought and paid cash for our two only about two weeks ago only to find them advertised all over Toronto at \$100 reduction on the wash, and \$100 on the dryer we think this is shocking, probably not the dealers fault, but surely when the public buy an article for over \$600. the manufacturer should protect them to the degree that other dealers cannot undersell so greatly.

We would appreciate hearing just how

1070.

"this is possible, and once more bring
this to your attention that it certainly
does not make buyers out of your product.

L. Pickering, 81 Brentwood Rd.S."

I had a letter from a women in Newfoundland.
You have heard about the outports of Newfoundland.
The women in Newfoundland are buying washing machines
as never before since they are getting the baby bonus
and old age pensions. I answered here as follows:

"Mrs. Robert Tucker,
St. Philips via Portugal Cove R-d,
St. John's Nfld.

Dear Mrs. Tucker:

Your letter dated March 27th has
just reached my desk, although I notice
from the post mark that you mailed it
on April 1st.

The Westinghouse Washer Model CITP
which you have, was sold in 1953 at a
Suggested Retail Price of \$229.50. This
price was in effect all the way across
Canada, including Newfoundland, which,
as you undoubtedly know, chose to become
part of Canada in 1948.

When Westinghouse appliances are sold
on time payments, the arrangements for
finance charges are made by the local
dealer, working with a Finance Company,
usually. These arrangements are some-
thing beyond our control or knowledge
altogether, and there is considerable

"variation in them.

Personally, I was a bit surprised at your question 'What is the price of this washer in Canada?' When Newfoundland decided to become a part of Canada, several years ago, I am very sure that all of the people in the other nine provinces were very happy to have you join with us, and felt that the addition of the tenth province would be, over the years, become a good thing for every one concerned. We all felt that from that day on, all Newfoundlanders became also Canadians, even though they were not any less Newfoundlanders than they were before. I have read a great deal about your country and have a great deal of admiration for the people who live there, and I know that this feeling is shared by a great many other people in Ontario, and the other Provinces in Canada."

That last paragraph is propaganda.

Now, I have a letter here from Fonthill, dated April 19th, 1954, addressed to Mr. John Harrison:

"Dear Sir:

I have been given your name as the man in charge of all sales of Westinghouse appliances, by one of the local stores. I am writing to you to ask your attention concerning a Westinghouse Automatic

"Clothes Dryer. I was in Toronto on March 4, 1954, and paid cash for a dryer at the Consumer's Electric at 1042 Bloor Street. The salesman, Mr. Burke, assured us that it would be delivered and installed by the end of that week. However, three weeks went by before it was even delivered. Since then, I have called the store at least twice and also had my mother in Toronto call them, each time being assured it would be looked after in a day or two. But still, six and a half weeks since we bought the dryer, it still has not been installed and we have heard nothing from them. The last time I phoned, I was referred to a Mr. Freeman at the Yonge Street store who promised faithfully to have it two weeks ago today but still we have heard from no one. Unfortunately, the price of the installation and service was included in the sale price, or otherwise we could contact one of your dealers from around here. In the meantime though, my patience is completely exhausted and it is certainly seems unpardonable that they have not even attempted to explain the delay. It would certainly seem worth their while, for the name of the company and of the store to look after their customers a little better than this.

" I would appreciate it very much, if you could do something about this immediately because obviously any conversations with the salesmen in the store are as worthless as their promises.

Yours very truly,

Mrs. Maurice MacPherson."

My answer is as follows:

"Dear Mrs. MacPherson:

We were very much interested in your letter of April 19th, addressed to Mr. John Harrison at our Toronto office, which finally came to the writer's attention, as we do not have a Mr. John Harrison in our organization. We did have, at one time, a Mr. George Harrison, who has not been with Westinghouse for some months.

It is rather difficult to understand why you bought a Westinghouse automatic Clothes Dryer from a dealer in Toronto, when we have a dealer in Fonthill, Wilson Hardware, and a dealer in Welland, Arvay Electric. It is true, of course, that our customers are free to buy our appliances wherever they please, but we have always endeavoured to have a complete dealer representation across the country so that Westinghouse customers would be able to get the proper attention and service from

"their nearest dealer.

The responsibility for installation and service rests entirely in the hands of the dealer who makes the sale. He must either give this service himself, or arrange to have it taken care of by the local dealer. I imagine it would be a bit difficult for Consumer's Electric in Toronto to take care of either installation or service in Fonthill.

This problem is a bit further complicated by the fact that the Consumer's Electric account in Toronto is handled by our Toronto branch, but Fonthill is in the territory looked after by our Hamilton branch. This makes the matter a regional one, we have, therefore, referred your letter to Mr. Eric Hall, Regional Manager, Appliance Sales, Canadian Westinghouse Supply Company, 195 Fleet Street East, Toronto, Ontario, and have suggested to Mr. Hall that he endeavour to have Consumer's Electric carry out their obligation to you."

I have more of these. It goes on all the time because our reputation is in our products and it has been dragged in the mud and we can do nothing about it. Last night on my desk there was a group of guarantee cards and on this card we asked them what induced them to buy. There is one from Toronto, "I like Westinghouse

appliances", one from Winnipeg, "by a salesman"; one from Toronto, "by salesman"; one from Ottawa, "advertising"; one from Windsor "advertising and salesman"; one from Riverside, Ontario, that is near Windsor, "We own a Westinghouse Refrigerator"; one from Winnipeg, "by advertising".

I have had ten thousand of those cards come across my desk and the comments are so interesting I wrote them down in a book and this has been going on since 1953.

There is one from Calgary, "prefer Westinghouse"; St. Boniface, "Husband bought it"; another "Report made on machine by Consumer's Research Bulletin"; then, "Advertising plus fact I also had a range". This could go on for hours.

The point I am making is this; the selling of automatic washers and dryers is a selling job and the dealer cannot do it unless he has a margin. On Monday night of this week I went out after dinner and I went into a basement and washed clothes because the dealer never found out how to do it. The salesman had said, "I cannot do anything with this woman". I went down and did the washing and I called her up last night and asked her how they were and she said they were beautiful. It has to be done and these fellows who are cutting our throats now will not do it, because they haven't the money to do it. They have to have their margin of profit. I have spent nearly 27 years in sales education work. I used to have meetings in Toronto and have 200 men listen. I could fill this room with men who learned

to sell washers through me. I ask them to come to meetings, and they say it is a waste of time because these cut-throat artists will steal the sales from us.

I had a dealer from up north who came to Belleville because his wife's health was bad. He came to us in our Toronto Office and asked where was a good place for him to go into the appliance business. I said we needed a good dealer in Belleville and Enos David is a good citizen in Belleville today and built up a wonderful business. At the convention a couple of months ago I said "How are you making out?" and he said, "If I could get out I would". He said, "These price cutters in Toronto have got me buffaloed. My customers go into Toronto and buy stuff and bring it back and expect me to service it for nothing." He said, "If I don't service it they write to Westinghouse", and names like Westinghouse, General Electric, Beatty and the Easy Company are being prostituted in the mud by a few price cutters who are capitalizing on the work that has been done and who will fail because the promotion work is not being done.

Lord Harry, I went out in the early days and talked to women. I carried the washing machine into the house and it weighed 200 pounds, took her hot water and suds out of the tub and put it in the washing machine and proved to her she needed a washing machine and went back at night and convinced the husband he could afford it. I would say, "It only costs you a few dollars a week and after she has passed out and is laying in her coffin in the front room", he would wish then he had

bought her a washer. Do you think that is funny? We did it and we got thrown out. I have backed out the door and the fellow has said to me, "You cannot talk to me like that", and I said, "It is your house, it is your wife and your front room in which she will be lying dead", and I have gone back in and got the order and that is what built the business up and it still has to be built up that way. You cannot do it any other way. I think I have said enough.

MR. RAYMOND: I may say at our Laundry Association meetings, it is necessary to fine Charlie Pearce for getting in his commercials.

MR. BLOOM: Mr. Campbell just points out he has the figures broken down.

MR. CAMPBELL: What I have is for four months. We are facing a tough situation. The total sales of washing machines are down 12 percent or 9,600 units this year over last year, and the breakdown goes across the country. In Ontario it is 14 percent drop and of the 9,600 units, 3,992 are in Ontario. Quebec is down 8 percent, the Maritimes are down 12 percent, the Western Provinces, Manitoba 12 percent, Saskatchewan 14 percent, Alberta 15 percent.

Now, there is a situation out there I do not think is caused by price-cutting. They cannot get rid of their wheat. In British Columbia, however, the business is up 9 percent so I point out the big drop is right here in Ontario. That is for the first four months of this year.

THE CHAIRMAN: That is where you are experiencing most price-cutting?

MR. CAMPBELL: The worst area is right in Toronto, and within the circulation radius of the Toronto papers. It is becoming a little more of a problem in Winnipeg. They haven't even got television out there yet and they were advertising last week warehouse clearance sales.

THE CHAIRMAN: Are you getting much trouble in British Columbia?

MR. CAMPBELL: Not as far as actual price-cutting is concerned, no.

THE CHAIRMAN: Because some of the other industries seem to be more severely hit out there than anywhere else.

MR. CAMPBELL: I would say as far as British Columbia is concerned, applied to washers only, actual cut price is not a factor in our business as yet. I think this situation in Toronto will spread all over the country as time goes on. Today we have a situation where some of the largest accounts we had will not buy national brands. I refer to the two large department stores in the city. They cannot put national brands on their floor because they cannot afford to be undercut and they cannot operate on 17 or 18 percent and neither could the price-cutter if they had to pay their overhead. So what has happened is that we have lost these accounts because of the situation in Toronto and in one case right across Canada. They are buying washers from the United States and putting them in the store as their own private brands so they can maintain the price.

Now, we have lost a lot of dealers in the

furniture business. Sure, you can cut the prices in furniture but it is hard to identify two chesterfields and with washing machines the particular model is identified and they cannot afford to be undersold. Anybody who is going to do a selling job has to have a margin of somewhere around 30 percent on selling.

MR. BLOOM: Mr. Chairman, what Mr. Campbell has pointed out in these figures is further evidence of the figures we have quoted in the brief, the 1952 figures being down from 1950, and the 1953 figures being down further than in 1952 and the first few months of this year being down still further. It has created a situation in industry of reduction in volume and unemployment in the industry. Certainly profit margins have been reduced if not completely nullified and further than that, the industry is being placed in jeopardy to the point where they cannot sell the product with the confidence of the dealers. They don't know if the price they get themselves is going to be worth the value they buy it for. There is a fear created in the public mind because of the same situation. Just as you said, you paid a certain price to buy a washing machine and saw the same models \$50 to \$100 or more reduced in price. It breaks down the confidence you had originally in buying that product.

THE CHAIRMAN: As far as I am concerned, it hasn't.

MR. BLOOM: I am not speaking specifically of you but of the general trend. I am actually afraid to buy anything today because I may be taken, because I don't know whether the price I am going to pay for it is the

right price. I might wind up seeing the product I am buying advertised at a considerably lower price. It just creates confusion, in my opinion, to such an extent that the public are putting off buying. In other words, it is actually restricting the normal trade and these sales that are being made today at cut prices are being made on an anticipated basis. In other words, it is anticipated business to such an extent that that business is not forthcoming in future. All cut prices anticipate a great amount of sales and I believe this situation that has been created is anticipating business and it is hurting normal regular business to such an extent that the people who want not only name brand products but new products are putting off buying until such time as things have settled down. A number of people have told me that personally. I also believe if this situation is allowed to continue it will create such a condition that a good number of established people in industry, both retail, wholesale and manufacturers are going to be so hard pressed that they will automatically be compelled to get out of the business and that will leave these individuals or groups of firms or agents in such a very firm or solid position that they in turn will be able to set their own prices and set their own trading conditions.

Now, gentlemen, I feel in summing up the brief we have presented today on behalf of this industry, I believe there is no room for restrictions under present day conditions. There is freedom of supply, freedom of employment, there is freedom in every phase

of manufacturing, wholesaling and retailing. There are no shortages, there is no reason for any restrictions whatsoever. Restrictions one way are just as bad as another way. We cannot have restrictions in certain phases of industry or agriculture, or natural products and have no restrictions on something else, or conversely have restrictions in other phases of industry. I believe complete freedom of distribution and supply and demand will govern all this and as a result, gentlemen, I would submit on behalf of the Home Laundry Manufacturers that this industry and all Canadian industry would be far better off if restrictive practices were removed and complete freedom of manufacturing, distribution and selling would best serve the Canadian public. It would make them more confident in the products they buy than they are at the present time under this present legislation.

There is one other point I would like to clear up. In listening to Mr. Lawson, I believe he was asked a question about fictitious trade-in allowances, trade-in allowances for an old broom or some such thing. I believe that practice was in effect in Vancouver particularly and also around this area during a period of time in 1951 when there were restrictions also on home laundry equipment and all appliances for that matter, but those restrictions were in the form of credit restrictions and the addition of excise tax and the increase in sales tax.

MR. FAVREAU: They would give you the trade-in as the first payment.

MR. BLOOM: Yes. Our industry went down in 1951 when the sales tax was increased from 8 percent to 10 percent and when there was excise tax placed on washing machines and home laundry equipment, and furthermore the credit restrictions were imposed at which time the down payment had to be one-third. Now, in order to get around the restrictive conditions, the dealers would overcome the one-third down payment by taking in an old broom or an old teacup.

THE CHAIRMAN: You mean that was general?

MR. BLOOM: It prevailed in British Columbia and in this area and was fairly general. I wouldn't say it was completely general.

THE CHAIRMAN: It would very largely defeat the purposes of the credit restrictions.

MR. BLOOM: It was intended to, I believe. That was the answer at that time and in spite of that situation, sales of our industry, of washing machines, dropped drastically in 1951. It improved very slightly in 1952 when restrictive trade measures came into effect but the figures were still down in 1952 and down further in 1953 and these figures for 1954 you have heard quoted are still down.

MR. WICKWIRE: I am going to do this in reverse order this time and ask Mr. Bloom a question on his last statement first. I have with me a book prepared by the Director of Investigation and Research, and would you turn to page 196 on the production of domestic washing machines. In 1950 the figure was 23.46; in 1951 it gives the months by averages, starting at 30.71 in

January and ending with 11.91 in December. As you indicated there was a falling off in production.

In 1952 it begins with 12.43 in January and ends with 24.38 in December.

MR. BLOOM: That is right. May I say as an explanation, I believe the budget with the increase in sales tax and excise tax came into effect at the end of April or the beginning of May. I believe the budget was late that year and I believe it came into effect some time in May. You will notice in 1951 the figures for June dropped 19 and continued to drop all the way through to a low in December and into 1952 until the end of March or the beginning of April. The budget was introduced around the early part of April, 1952, with the excise tax being taken off and credit restrictions taken off.

MR. WICKWIRE: It is a bit difficult to draw any inference from these figures that the abolition of the right to maintain resale prices had any effect.

MR. BLOOM: The only reason was there was a pent-up demand created by excessive restrictions in 1951. People couldn't buy if dealers didn't offer those gimmicks such as an old teacup for a downpayment. If the dealer was cautious, as he should have been, it created a pent-up demand which began to be ~~satisfied~~ again in 1952, but certainly not in comparison with 1951.

MR. WICKWIRE: On page 1 of your brief you state near the bottom of the page:

"The prohibition of resale price maintenance under the Combines Act, we believe, was

"prompted as a measure to control the increase in the cost of living brought about by the general conditions of insufficient supply of merchandise to meet normal market demands, plus the surplus availability of purchasing power."

Now, I have with me an extract from the Prime Minister's speech to the House of Commons on October 15, 1951 on this subject:

"I do not think that this is going to have a very substantial effect on the index of the cost of living. I think it is going to bring about some changes in resale prices because I do know there are instances where the spread between what the consumer has to pay and what goes to the primary producer seems to be inordinately large."

Now, I suggest to you that was the main reason for the imposition of the ban on resale price maintenance.

MR. BLOOM: Isn't it a fact in 1950 there was still shortages existing in various industries and certainly in the appliance industry. In the washing machine end of the appliance industry we believe that we caught up the pent-up demand, backlog of demand at the end of 1950. We were in a more normal type of condition at that time than a good number of other appliance manufacturers. There were still shortages

of sufficient merchandise in other appliances and as a result we found in the latter part of 1950 and into 1951 the washing machine was being pushed to the background because there was still such a demand for refrigerators or ranges or other appliances.

MR. WICKWIRE: In other words, if people couldn't buy them all at once you are suggesting there are certain types of appliances they would have on their list?

MR. BLOOM: Yes, that is right, and I would also suggest because of that situation in appliances that retail prices were considerably maintained or higher than they would have been if all merchandise as it is today were completely free of any shortage of supply.

MR. WICKWIRE: We have had evidence before the Commission as far as small appliances were concerned it went from a seller's to a buyer's market.

MR. BLOOM: Yes.

MR. WICKWIRE: Would that apply in the major type of appliances too?

MR. BLOOM: Yes.

MR. WICKWIRE: On page 2 it is suggested:

"The result of no price maintenance is to destroy the basis for list prices and discount procedures which has resulted in decreasing the volume of business done, bringing about unemployment in the industry, leaving the public confused and placing the capital investment and good will of manufacturers, wholesalers and retail merchants in

"jeopardy."

Now, when you refer to decrease in volume, that is the manufacturer?

MR. BLOOM: Yes, sir, we are speaking only of the manufacturer in this brief.

MR. WICKWIRE: Now, Mr. Campbell has given the Commission some percentages of his company.

MR. CAMPBELL: Of the industry.

MR. WICKWIRE: Can figures be supplied to the Commission for the years 1950, 1951, 1952, 1953, and also 1954?

MR. BLOOM: You mean by provinces?

MR. WICKWIRE: Yes.

MR. CAMPBELL: There is one thing I would like to point out, and that is the effect of no price maintenance is just beginning to be felt now. Last year there was a lot of advanced buying done because of price cuts and now it is levelling off.

MR. WICKWIRE: I have had the figures checked in the next paragraph and they disagree with your figures in some minor degree although I think the relationship by years is about the same.

MR. BLOOM: I have quoted, sir, from the Dominion Bureau of Statistics that I have here in 1950 and 1952. These are Dominion Bureau of Statistic figures and we collected 1953 statistics from our own Association statistics because we did not have the Dominion Bureau of Statistics.

MR. WICKWIRE: I believe the 1953 Dominion Bureau of Statistics figures to be 253,370.

MR. BLOOM: We do not have the Dominion Bureau figures, sir, for 1953, at least I didn't have it when I prepared this brief. I have quoted from the 1952 figures of the Dominion Bureau of Statistics.

MR. WICKWIRE: I have a slight variation, it is a little less. You show for 1952 259,253.

MR. BLOOM: Yes.

MR. WICKWIRE: The figure I have is 248,510. For 1951 you have 245,110 and the figure I have is 240,170.

MR. BLOOM: My figure here was a total of 240,110. We were quoting the conventional washing machine. There are other types of machines in here, automatics, hand machines, conventional machines and other types.

MR. WICKWIRE: Now, on page 3 you say:

"The prohibition of resale price maintenance has failed to accomplish the purpose for which it was intended. The loss-leader practices that exist in this industry at present have not reduced the cost of living which has, on the contrary risen steadily during the period that this legislation has been enforced. Unemployment has also increased rapidly during this same period. One basic reason can be cited for the general confusion existing in the minds of the public when they are confronted with so many different price tags on the

"same merchandise; they hesitate to purchase for fear that the price they are asked to pay be too high, as they see the same article offered at different prices if not necessarily sold. The consumer expects to find the product of a reputable manufacturer sold at the same price everywhere."

Now, I am afraid I must disagree with that because I think just the converse is true. I have the consumer price index here and I would like to point out to you for 1951 the index was 113.7. In 1950 it was 102.9; 1951 was 113.7; 1952 was 116.5, and 1953 was 115.5.

MR. CAMPBELL: It is up since 1951. Washers are not included in that, you know.

THE CHAIRMAN: That may have had some effect.

MR. BLOOM: Also there was a change in the method of reporting the cost of living at that time too. The new method of reporting, as I understood it, was on a different basis and it was a weighted figure.

MR. WHITELEY: It is the same series. There was an old series which was discontinued but the new series carries back to the base.

MR. BLOOM: But the new series has a different method of reporting.

MR. WHITELEY: The new series has a different index than the old series but it is related to the base that was used.

MR. BLOOM: The base was used but there was

incorporated in it a weighted figure.

MR. WHITELEY: What is the point of your observation, do you say the new series gives a different picture than the old series?

MR. BLOOM: Definitely. I am speaking now of the general condition of the cost of living.

MR. WICKWIRE: May I point out to Mr. Campbell that the consumer price index reached its peak in December, 1951, of 118.1 and since then has been steadily going down month by month.

MR. BLOOM: In 1951 our industry was considerably down.

THE CHAIRMAN: Gentlemen, I think we have the point about the cost of living. It is very small and there may be a great many other factors.

MR. BLOOM: I only used that to indicate that during the period of time, unemployment in this industry has increased materially.

MR. WICKWIRE: On page 3 you said:

"The consumer expects to find the products of a reputable manufacturer sold at the same price everywhere."

Now, I take it you are in violent disagreement with the consumers because the evidence we have is the consumers like to shop. We have had a lot of evidence of that and price is a very important item in the consumer's mind when he buys any product.

MR. BLOOM: I agree on over-the-counter methods, wearables and that sort of thing, but when it comes to consumer durables where the consumer expects to buy and

use the product for a period of not one or two years or five years, but perhaps twenty or twenty-five years, and we have products of our own manufacture in use for thirty years, and when an individual or consumer buys a washing machine, they buy it for a long time. They don't like to see a different price on the same product and our products are very easily identified.

MR. WICKWIRE: There must be a lot of people who are unable to buy your products or the products of you gentlemen because of the high price.

MR. BLOOM: Yes, that is true but we have in our line, and because of the very rigid competitive merchandising, products of every manufacturer in this industry, priced within the reach of the buying public.

MR. WICKWIRE: I appreciate there would be competition among the manufacturers but is there competition in price under the system suggested by you with the retailers.

MR. BLOOM: Very definitely. We do not suggest a dealer must maintain a list price, we never could. We can suggest the product we manufacture bear a certain price to the consumer. If the dealer chooses to cut the price by offering a better trade-in allowance, or by way of actually reducing the price to the consumer, we cannot do anything about it.

MR. WICKWIRE: The manufacturer would have no objection?

MR. BLOOM: I do not think so; we definitely wouldn't, from our standpoint, but we definitely insist under present conditions it is a flagrant disregard for

the price established by the manufacturer.

MR. WICKWIRE: It boils down to this, in a free economy, who fixes the price?

MR. CAMPBELL: In your profession you have a set scale of charges for legal fees and if you go in to have a document drawn up, they will show you the charge.

MR. WICKWIRE: I would suggest in my profession that that is a suggesting scale.

MR. CAMPBELL: Ours is a suggested price and always has been. We never could actually control prices the dealer sold the merchandise for. This has gone to the extreme, where a dealer advertises below his cost.

MR. WICKWIRE: If the dealer can make a profit doing it, he can stay in business.

MR. CAMPBELL: You spoke of one of these price cutters and I know them all, and he said to me, "I don't know how the little fellow stays in business".

MR. WICKWIRE: If a dealer makes a profit he can stay in business.

MR. CAMPBELL: Yes, but there is one point here, one of these fellows said to me, "I don't know how the little fellow stays in business", and I said, "You ought to thank God they are in business because the moment the little guy gets out of business, you fellows cannot live and you cannot subsist".

THE CHAIRMAN: Now, you are referring to that document again and perhaps you could bring it forward and mark it as an exhibit.

MR. CAMPBELL: I would like to mark it as a

horrible example.

THE CHAIRMAN: Several tear sheets from the Toronto Daily Star, the first dated January 22nd, 1954, the next one is dated January 29th, 1954, and the third is February 2nd, 1954, containing advertisements referred to by Mr. Campbell, will be marked Exhibit T-15.

--- EXHIBIT T-15: Tear sheets from Toronto Daily Star as above.

MR. BLOOM: May I also say, Mr. Counsel, in regard to a dealer making a profit and staying in business regardless of what he sells the merchandise for, from the standpoint of the manufacturer, excessive pressure is placed on the manufacturer because of this type of merchandising. With these various advertisements to which we have referred, one dealer gives his fictitious selling price and creates a pressure by other dealers on the manufacturer to continue to reduce his price.

MR. WICKWIRE: What is a fictitious selling price?

MR. BLOOM: A fictitious selling price is a price that is advertised to the public at a figure even below the actual cost of the product.

THE CHAIRMAN: That is hardly a fictitious price.

MR. BLOOM: It is fictitious only because he does not choose to sell it in any kind of volume. In other words, we heard just before we came on, a reference to "nailed down prices" and these, of course, would come in that category very definitely because if he is going to advertise and stay in business he must make a profit. If he advertises a product at lower than his cost price

he certainly is not going to sell any large quantity.

MR. WICKWIRE: The one person he is going to hurt is himself.

MR. BLOOM: That is right. He is creating a situation by continually forcing the price downward to the point where the manufacturer must continue to scale his price down.

MR. WICKWIRE: To use your own expression, "fictitious price", I am trying to find out from you gentlemen if it is the view of the association you represent that any price that an article is sold at below the suggested price is a fictitious price.

MR. CAMPBELL: Very often this stuff is bolted to the floor.

MR. WICKWIRE: We had a chap here this morning who stated that the practice was brought into vogue and a lot of manufacturers actually sponsored it.

MR. CAMPBELL: We are not under oath here, are we?

THE CHAIRMAN: That is not a good reason for not telling the truth.

MR. CAMPBELL: The manufacturer is hard put to today. What we have to try to do is introduce low priced merchandise at a low profit and try to tell the dealer .. to sell the features of the goods. We still have a lot of dealers trying to make a profit and there is only a few bucket shops and it is the legitimate dealer we are concerned about.

MR. WICKWIRE: You would bear out what Mr. Lawson said this morning that manufacturers advocate that?

MR. CAMPBELL: Regardless of what kind of

legislation you bring in, we are going to fight for existence and we are trying to keep alive now and trying to suggest to dealers they offer promotional models at a very close margin, but it is a very hard thing to do.

MR. WICKWIRE: Then the very people you complain about are being aided by the manufacturers?

MR. PEARCE: They don't need any help.

MR. CAMPBELL: In the cut-rate areas, selling is a thing of the past. They haven't time to wait on you, they say the merchandise is tagged and you can look at it and tell what you have to pay. You buy on a price tag and we are trying to tell the legitimate dealer if he does a little selling he can still make a profit and we have to give him a price that will enable him to do so.

MR. PEARCE: An important thing is that his customer will get better value in the long run.

MR. WICKWIRE: Doesn't the price factor have quite a lot to do with it.

MR. BLOOM: The lowest price isn't necessarily the best value.

MR. WICKWIRE: In a nationally advertised machine made by any company which you represent I would say price is a very big factor.

MR. BLOOM: Anything you buy, anything you own or possess or ever hope to possess, price is always a factor, but the lowest price is not necessarily a true guide.

MR. WICKWIRE: Should not the public or the customer have the right to choose?

MR. BLOOM: Absolutely, and we have always believed

the customer should have the right to choose and that is the reason why we believe we should put a price on our product.

MR. WICKWIRE: And if the public doesn't pay it you have to do something about it.

MR. BLOOM: Not necessarily so. The only time we can do something about it is when sales are not being made.

MR. WICKWIRE: Then you have to do something about it.

THE CHAIRMAN: The man who spends his money is the ultimate judge of whether your value is good, bad or indifferent.

MR. WICKWIRE: Who is going to suggest to the manufacturer, he should develop a new product and market it and who is going to determine how much of that article he is going to tool up for?

MR. BLOOM: The public.

MR. CAMPBELL: The manufacturer has to do that. We have to start buying eight or nine months ahead of when we are going to sell and you have to figure prices.

MR. BLOOM: And to meet competition too. Now, we want the right to make a suggested price.

MR. WICKWIRE: Now, it has been suggested, perhaps it is an incorrect suggestion, but it has been suggested to this Commission that one of the reasons for this condition you complain about today was that there had been an unrealistic spread between the price to the dealer and the suggested retail price.

MR. CAMPBELL: Are you suggesting we have a

combine in our industry?

MR. WICKWIRE: No.

MR. CAMPBELL: How can I get more for my product if my competitors there would like to beat me every day of the week for \$10.00? I have to set my price at a price that will meet competition.

MR. WICKWIRE: You corrected the comment in the brief that was submitted yesterday where there was a 90 percent spread on an Easy washer, and certainly that is a goal for a price cutter to shoot at. 90 percent, I would say obviously is a bit high.

MR. CAMPBELL: There are some models in washing machines that will carry 40 percent and if you buy them in carloads you may get an extra 5 percent. Those are top end models and the average public likes to buy a good machine when they buy.

THE CHAIRMAN: 40 percent and 5 percent, that would mean approximately 90 percent mark-up on cost.

MR. CAMPBELL: I suppose that is an extreme and the low end lines would only carry 25 percent discount. We try to keep the price down too.

THE CHAIRMAN: That would seem a pretty high mark-up on cost. Suppose your suggested retail price is \$100, and 40 and 5 off, makes it \$57.00.

MR. CAMPBELL: There is usually a trade-in involved in there.

THE CHAIRMAN: That is price cutting too; that is what we are talking about.

MR. CAMPBELL: I think, Mr. Chairman, there always has been price-cutting but there is some measure of

control.

MR. RAYMOND: I have spoken to many people who seem to think a washing machine is built by a manufacturer who then looks at it and thinks he should sell it for so much money. We have a formula for establishing the price. We take our material, our labour and overhead, all of which are affected in various ways, and we add them together and say we will then add our manufacturing margin. Now, all manufacturers have a different idea of what their manufacturing margin should be. Then we have the price at which we sell that machine and we put the sales tax in there and we have the price at which we sell it to the wholesale distributor. The wholesale distributor says he requires a margin and on a general basis you can determine the figure the retailer says he should have and we agree that probably 30 percent or one-third is a healthy margin for that retailer to have. Now, we have arrived at the suggested list price. The advantage of that is this, that many people who go out to buy appliances have an old appliance to sell, and they are more anxious to get a good price for that old article than a better buy. It may be he is offered \$75.00 trade-in on another product, and \$50.00 on another, and he takes the \$75.00 and he actually hasn't made as good a deal for himself because he doesn't know what the manufacturer says that set should be worth.

MR. WICKWIRE: You have only had two people in the deal so far. You have had a good deal for the manufacturer and a good deal for the dealer, but the customer doesn't think he has had a good deal.

MR. RAYMOND: We used to feel in the washing machine market about a \$20.00 trade-in was an average, because the dealer would average getting \$20.00 back on the general run of trade-ins. Here is one person to whom he will give \$10.00 trade-in, and another person to whom he will give \$30.00 on the same trade-in. We have no objection to that, we have no objection to him taking a customer in the back room and saying, "You are a good friend and I am going to give you this for \$20.00 less than the price". The only thing we object to, when we establish that price as a safeguard to the public and it is advertised we are going to sell a \$185.00 washing machine for \$165.00.

MR. WICKWIRE: And you gentlemen still don't believe the customers plays any part in determining the price?

MR. RAYMOND: Very definitely, but the customer is only safeguarded if he knows what he should pay.

MR. WICKWIRE: In a free enterprise system, shouldn't the customer have some freedom of choice?

MR. RAYMOND: He has; he puts the two machines side by side and says, "For this value I would sooner have this machine".

MR. WICKWIRE: There is a difference between the cheapest car made and the most expensive car. There are a lot of people who cannot afford to have the most expensive car.

MR. PEARCE: They are the ones who buy them.

MR. BLOOM: It is the same in washing machines.

MR. RAYMOND: Any dealer who is worth his salt

is certainly not going to let a customer come in and buy the cheapest product. When you go into a store where you are well known they are not going to show you cheap merchandise, they say, "We are not going to sell this to you, this is what you should buy", and they tell you why. When you go in and say, "Here is a machine offered for little or nothing, have you this machine", they say, "We have one if you want it, but we wouldn't offer that to one of our customers. We don't expect you would want that sort of thing and we don't think you would be satisfied". If you pay \$10.00 for something, it is worth \$10.00, and if you pay \$50.00 for something it is worth \$50.00.

MR. WICKWIRE: If I have the opportunity to buy a Brantford machine at less than your suggested price, why should I not?

MR. RAYMOND: There is no reason that you should not, but the thing is you know we have an established price which is arrived at by taking our material, overhead, and putting in the tax and establishing a price. Of course, there are many other items.

MR. WICKWIRE: Of course there are. Dealers' expenses are not all the same.

MR. RAYMOND: That is right. But we do not approve of dealers selling at less than 30 percent.

MR. WICKWIRE: Would you give discounts to dealers for quantity purchases.

MR. RAYMOND: Small ones.

MR. WICKWIRE: Would you object to the dealer passing that on to the customer?

MR. RAYMOND: Not in the slightest as long as he doesn't come out and sell a \$185.00 Locomotive Washing Machine for \$135.00. How would all these cut-rate stores sell if they didn't advertise?

THE CHAIRMAN: I am trying to find out what your objection is. Is it the fact that they sell at these prices or the fact they advertise them?

MR. RAYMOND: If they didn't advertise them they couldn't exist.

THE CHAIRMAN: We want to get what your objection is.

MR. CAMPBELL: Chiefly it is advertising.

MR. RAYMOND: At one time, under resale price maintenance we didn't have to sell.

THE CHAIRMAN: Cannot you control the advertising policy?

MR. RAYMOND: Not in prices. How could we ~~if~~ we didn't cut him off?

THE CHAIRMAN: You could stipulate that your machines were to be advertised in such and such a way.

MR. CAMPBELL: Can we say price?

THE CHAIRMAN: We were told the other day about a very serious situation pertaining to this nailed down business. If a manufacturer doesn't like that cannot he ~~out~~ off the dealer?

MR. CAMPBELL: If he sells one it is not nailed down, is it? How can you prove he hasn't sold one?

MR. RAYMOND: You have no way of proving it. I saw a Locomotive Washer, brand new, advertised for \$89.50. We have not made that model for three years.

I know there was no use following up that advertisement because it would have been sold.

MR. BLOOM: We have submitted a paragraph regarding advertising. The manufacturers^{are}/expected to pay contractual rates in order to substantiate the local dealer advertising his product. Therefore, if our product is advertised under this cut price condition, the manufacturer is not only powerless to help that situation but he has to pay for half the advertising.

THE CHAIRMAN: Do you mean to say he must pay for half the advertising?

MR. CAMPBELL: Can you tell me how we can get out of it. Or can we say to a dealer, "If you won't advertise at our prices we won't pay for it?"

THE CHAIRMAN: Certainly.

MR. CAMPBELL: Can we say, "If you don't advertise at the price we suggest"?

THE CHAIRMAN: You can say, "If you don't advertise in the way we approve of".

MR. CAMPBELL: Can I say to a dealer, "If you don't advertise at my price I don't have to pay for it".

THE CHAIRMAN: You can make any contract you want with him.

MR. CAMPBELL: Can I mention price?

THE CHAIRMAN: I do not see anything in the law to stop you saying you won't pay.

MR. CAMPBELL: Supposing there is this man in the corner here who has always maintained my prices and I pay 50 percent, but this man here that cuts prices, can not I say, "I will not pay for your

advertising."

THE CHAIRMAN: I do not see why not.

MR. WICKWIRE: Where does this contract come in?

MR. CAMPBELL: That has been the custom for years.

It is standard business practice. The Toronto Daily Star which carries the biggest percentage of these cut price ads insists the manufacturer place a contract for a certain amount of lineage at a national rate before his product can be advertised in their paper by a local dealer at the local price for advertising. There are two rates for advertising, national and local.

MR. BLOOM: That is a form of combine. A good number of Canadian newspapers have established that a national manufacturer must place a certain contract over a year at a certain figure or otherwise the local dealer that inserts an ad must pay the rate, so for that local dealer to get the local rate, the manufacturer must contract under national rates for a year.

Now, the biggest percentage of manufacturers in this industry have what we call a co-operative advertising plan, that is, the dealer inserts the ad with his name prominently advertised and the manufacturer pays 50 percent of the cost of that advertisement. Now, this industry has been under the impression that under this legislation we cannot refuse to pay one-half of that advertising. Are we under some misapprehension.

MR. RAYMOND: The pamphlet of my company read that we wouldn't co-operate in advertising if the dealer who was advertising placed a competitive product in the same box or if he advertised the product at less than the

price established by the manufacturer. Now, when resale price maintenance was rescinded, I took all these pamphlets in our office and had these words struck out because I considered them illegal. Those forms are going out of my office today with that line struck out and have been for several years.

MR. WICKWIRE: I have just one further question.

MR. PEARCE: We would like to know if that advertising is legal.

THE CHAIRMAN: All I am going to suggest to you is you can cut the dealer off for anything but price. Now, if you believe you are tied up with a dealer so as to confine it and make it impossible to do so, I cannot help you.

MR. PEARCE: You should realize in this business a dealer is an important man, but let me put this to you. You go into a dealer's store and look at a Laundromat, the leader in the automatic washer field, and you say "How much is it"? And he says: "\$374.50". You say "Thanks very much" and walk out of that store and begin to shop and go into another store and say, "How much is the Laundromat", and in your mind \$374.50 is set, but you go down the street, and the fellow says, "I know the Laundromat is \$374.50 but I will sell it to you for \$329.50, if you want to buy one, ^{and}/I know where you can get it for \$299.00".

MR. WICKWIRE: I am one of those people who might not want to give \$25.00 or \$50.00 worth of sales talk. I believe your ad that I saw in the paper. You had that advertised as the best thing that ever happened.

I am one of those people who want the right to choose what I have to pay.

MR. BLOOM: Are you not in that position at all times whether the price is advertised or not?

MR. WICKWIRE: I am suggesting to you under the system of resale price maintenance I do not have that privilege.

MR. CAMPBELL: You are suggesting a \$30 or \$40 sales talk; are you suggesting we should not have salesmen?

MR. WICKWIRE: No.

MR. CAMPBELL: Somebody has to pay him.

MR. WICKWIRE: I am perfectly willing to agree with you that in the introduction of a new product, surely you must count on something for introducing it to the market, to make a market for it, but I cannot for the life of me see, and perhaps you can tell me, why the public should go on paying further.

MR. CAMPBELL: We have a competitor who keeps the price down. There is lots of competition.

MR. PEARCE: Further than that the price comes down as the market increases because the Laundromat sold for \$479.00 until the salesmen went out and created a market for it.

MR. WICKWIRE: I can see I am going to have one of your machines yet.

MR. PEARCE: You see, there is no demand unless it is created by salesmen. I have a neighbour next door to me who is Superintendent of a foundry, and another neighbour turned up that night with a Buick Special which

sells for about \$3,000, all yellow and chrome and gaudy and my neighbour, who is not an educated man, I asked him, "What do you think about it?" and he said, "I don't think it is any good, it is only a couple of hundred bucks more than a Chevrolet".

MR. WICKWIRE: I am one of the ones who believes when better automobiles are built, Buick will do it.

MR. RAYMOND: I thought this was an interlude because the point has not been settled. From the time the suggested list prices was established by the manufacturer, the competition between manufacturers will mean either success or failure of that individual manufacturer and that is the way it should be. Now, those who have remained in the business all this time have, I submit, been putting out merchandise at fair prices.

MR. WICKWIRE: Now, I have one more question on page 4 of the brief. You state:

"Imports of such products are completely unrestricted from entering Canadian markets."

I would refer you gentlemen to Schedule A of tariff item 415B:

"Washing machines, domestic, British preferential tariff 15 percent, most favoured nation 25 percent, general tariff 35 percent."

I suggest there is some measure of protection.

MR. BLOOM: I did not suggest there was no measure of protection. I was suggesting there was

complete freedom of importation.

MR. WICKWIRE: You suggest the imports of such products are completely unrestricted?

MR. BLOOM: There is no embargo on them.

MR. WICKWIRE: I am glad I raised that point.

MR. PEARCE: We have been villified, and I am speaking for Westinghouse again, in the House of Commons.

There was a Laundromat selling in Detroit and a Member of the House said it was the same machine that was selling in Windsor and the differential was \$300.00. Not a word of what he said was true. Our American manufacturers make 1400 Laundromats a day -- we make 40.

MR. WICKWIRE: I always understood that Beatty was a very good name too.

MR. PEARCE: Are we just clear on whether we are going to get a policy for advertising?

MR. RAYMOND: We can do anything except for price.

MR. CAMPBELL: We would like an answer to our question about the advertising price.

THE CHAIRMAN: We have given you all the answer we can.

--- Whereupon the hearing adjourned at 1.05 P.M. until
2.00 P.M.

DELEGATION FROM: SUNBEAM CORPORATION.

COMPRISING: Mr. B. H. L. Symmes
Herman T. VanMell

--- The hearing commenced at 2.00 P.M.

THE CHAIRMAN: The hearing will come to order, gentlemen. This afternoon we have representations to be made on behalf of the Sunbeam Corporation.

MR. SYMMES: I am appearing for the Sunbeam Corporation.

THE CHAIRMAN: Your full name?

MR. SYMMES: B.H.L.Symmes. With me is Mr. Herman T. VanMell. Mr. VanMell is a Director and Secretary of the Company and is counsel for the parent company in Chicago.

On the hearings in Ottawa, when it became apparent the Commission would be interested in information firsthand as to fair trade as it goes in the United States, we thought it would be of interest and serve a useful purpose to tell you about it and answer such questions as you wish. Mr. VanMell has had extensive experience in the United States.

THE CHAIRMAN: We welcome Mr. VanMell and will be glad to hear his observations and comments.

MR. VANMELL: Thank you, Mr. Chairman.

May I amplify the position of the parent company. We have participated in the drafting of the McGuire Act which is a federal enabling law. We have assisted in the drafting of various state legislative laws and we have assisted in the drafting of a bill currently before the District of Columbia committee to correct a very bad

situation there which I will explain a little bit later. Therefore, Sunbeam Chicago's experience has been rather extensive on the legislative front. On the legal front we have had more than 300 cases in court in various states of the United States to enforce our fair trade structure and we have had most extensive fair trade litigation experience. From a practical standpoint, the Sunbeam appliances of which I have three representative samples, have reached a position of pre-eminence in the United States which makes them particularly desirable for loss-leader purposes ^{which} have hurt us for reasons I shall explain. Because of this background and because it seems to us that Canada is on the verge of some of the conditions which now exist in the States that have no fair trade laws, it may be helpful if we commented on our experiences and tried to relate it to the present situation.

Coming over on the plane I had an opportunity to read the compilation today and I was interested to know that practically all discussion was angled from the distribution side. In other words, it is like the fable of the goose and the golden egg and you remember there was a thought if the goose laid a golden egg a day, you could kill it and get all the eggs.

MR. WICKWIRE: I do not want to interrupt you, but are you referring to the Green Book?

MR. VANMELL: Yes.

MR. WICKWIRE: There is no discussion in it, it is a compilation of facts.

MR. VANMELL: I correct myself.

Now, it is a very important question as to how we shall divide up this golden egg which is symbolic of our standard of living. It is equally important how we got the goose that laid the golden egg and how you protect the health of that goose. We are very much interested in our own health, we have the health of Sunbeam (Canada) as well as Sunbeam, Chicago, to consider and we think it is important to the community as a whole and to the consumer, and there are many considerations, not only as to distribution but manufacturing problems.

Now, we urge a return to the common law as it existed before Section 34 of the Act was enacted. I think you gentlemen are aware of Section 34, and that it is a radical departure from the common law and I think it would be appropriate to state at this point what the common law is, and I am reading now from 2: Chancery Reports, page 275, 1901, and the case is *Elliman, Sons & Company vs. Carrington & Son Limited*. This case came on before one of the most noted Chancellors that ever sat in modern times, Mr. Justice Kekewich. This case involved resale, fair trade, a contract situation and is precisely identical to that which we actually use in the United States. I will read from the headnote:

"The plaintiffs, who were manufacturers of goods, sold them to wholesale traders under a contract whereby the purchasers bound themselves not to sell the goods for less than certain specified prices, and if they sold to the trade to procure

"a similar signed agreement from every retailer whom they supplied. The purchasers sold some of the goods to retail traders without procuring from them any such agreement as provided by the contract. This action was brought to restrain such conduct and to recover damages."

THE CHAIRMAN: The action was by a manufacturer against the distributor?

MR. VANMELL: Yes.

THE CHAIRMAN: Not a retailer?

MR. VANMELL: Not a retailer in this case.

Objection was made by the Defendants that this contract was in restraint of trade and that is really the issue we have here.

THE CHAIRMAN: Did you ever see the Selfridge case?

MR. VAN MELL: I am not familiar with that case.

THE CHAIRMAN: There was privity of contract.

MR. VANMELL: There was no privity of contract.

I will interject that in the 45 states having fair trade laws we follow precisely the system described in this case.

We sell only to distributors who contract to sell only to retailers, who in turn have to sign a contract. No matter who violates the contract we have the right to sue them on this contract. That meets the point you raise because our system provides for it.

Now, I do not like to burden people with lengthy opinions but I think this case is right to the point.

I will read:

"The Plaintiffs are manufacturers of Ellimans Royal Embrocation for Horses and Cattle and Elliman's Embrocation for human beings. They are not bound to sell the embrocation at all. They are not bound to manufacture it. They are at liberty to do so as they please, and when they have manufactured it, they are at liberty to sell it at whatever price they choose to fix -- it may be a prohibitive one, or it may be such a small price that they cannot make any profit out of it. That is entirely for their consideration. Carrington & Son are minded to buy Elliman's Embrocation with a view to selling it again -- that is, to buy it wholesale in order to sell to others retail, and Elliman's make a bargain with them that they shall not sell it below certain prices -- that part of the bargain has not been broken -- and that when they sell to others they will procure from those others the agreement that they will not sell it at below certain prices. Why should not Messrs. Elliman be at liberty to fix the price in that way? Nobody has argued, and it could not possibly be argued, that they are not at liberty to fix the price on the first sale to

"Carrington & Son. Why should they not be at liberty to make a further bargain with Carrington & Son that they shall not sell it below a certain price? It is said that it is in restraint of trade. In one sense it is, but it is just as much and no more in restraint of trade for Elliman's to say that they will not sell at all. It seems to me that what is restraint of trade as regard Carrington & Son is really the liberty of trade as regards Elliman."

To paraphrase that, the so-called restraint of trade by which we attempt to control the price in Toronto at resale is precisely the liberty of Sunbeam, Canada, to fix the price in the manner in which it thinks will move most of its products. There is one liberty and another liberty and the decision to be made is which liberty is more to the advantage of the public as a whole.

I will continue a little further from the opinion:

"It is merely a question whether a man is entitled when he is selling his own goods to make a bargain as to the use to be made of them by the purchaser. It is said that the contract is against public policy, but that phrase merely embodies, for the present purpose, the great principle of restraint of trade, and to say that it is to prevent Messrs. Elliman from exercising their own

"discretion seems to me to be applying a well told principle of law to facts to which it cannot have any possible application. On the question, therefore, as to the validity of the contract, I am entirely against the Defendant."

Now, the Chancellor pointed out Elliman created that embrocation. We created that MixMaster in the early 1920's. There wasn't such a thing then. You prepared your dough by putting it in a pail and stirring it with a spoon. A few restaurants and hotels did have fixed mechanical devices. If you wanted to squeeze an orange you got a little metal or glass or porcelain device and squeezed it that way. If you wanted to shred lettuce or cabbage you rubbed it in the way that goes back to the middle ages. Sunbeam in Chicago could see Mixmaster's latent possibilities and Sunbeam created it. Nobody could demand we create this. It took years of effort in the experimental department. We finally got this device and said, "Here is something that will lighten the load of the housewife and contribute to the enjoyment of living and will sell". Finally our experimental department said, "We have set up the manufacturing process". I would like to say this went on the market in 1930 in the United States and in 1932 in Canada. The mental process was this, we have something we think is desirable, we know the housewife is skeptical and she will have to be shown. There is nothing like it at all on which she can base previous judgment or experience. We also know to make this device it has

to be die cast, it uses bakelite housings, and it has glass balls. We have to set up very elaborate production machinery and we have to have pieces that probably cost \$500 to \$1,000 to make. The only way this can be made is by mass production. So the engineers tell us, "You need such and such equipment" and so on, I don't know what the figure was in the 1920's, but let us say a total to tool up for that would cost perhaps \$500,000. If you could see our factory in Chicago or Toronto you would see things are laid out along the process of what we call straight-line production and you are familiar with the processes. They say we will start off with a capital investment of \$500,000; we will have to train a working force, we will have to buy materials and probably lay in another \$500,000 worth of material and we shall have to spend another \$1,000,000 in labour until we get a supply of these off the line. They come off the line at 250 a day and have to move and have to be sold. Our engineers can figure out production but not how much it costs. Well, how are we going to get that initial outlay of a million or \$1,500,000 back and make a profit. I think the way is to proceed to have retail dealers say they will put two on their shelves, and to continue until we have at least 100,000 dealers saying they will take these. They have to do it simultaneously, you cannot have one dealer in Chicago say, "I will take a chance and take five."

Now, what calculation does our management make as to the probabilities. We say, how are you going to price this to the consumer. We know what it cost to

set up the machinery, we know we have to sell 500,000 units before we start to make a profit. What price are we going to charge? Then you come to the point of services to the retailer and the cost varies as has been brought out from a very small amount to a large amount depending on the nature of the product. You have to figure the cost of moving something like this first when it is brand new and later when it turns over two and a half times a year. We do what all prudent business men do, they resort to averages. I think this is something that has not been brought out in any detail before in this hearing. Every decision in life, business lives, government lives, is based on averages. The Canadian Pacific Railway when it schedules a train figures out that over 100 people are going to ride between Toronto and Windsor. There may be 100 who may not ride but it doesn't alter the fact if the averages are correctly drawn they can schedule a train service and they set up schedules and provide the service. This is a very important point and I hope I can emphasize it sufficiently so that you know our problem is based on averages. I am not discussing the problem of one retailer who could dump this on his floor and turn it over for a few cents. We cannot run on that expectation. We have to do just as the Bell Telephone Company does. They estimate how many average calls can be expected. The utility companies try to figure out what the average electric load will be and try to take care of peaks and heights. The life insurance companies contract to pay you if you die before a certain time. That is all done on averages.

MR. WHITELEY: I do not want to interrupt the flow but it would seem to me public utility does try to scale their output so as to build up loads. If they have an off period, they do not take the average cost and say this is the average cost.

MR. VANMELL: That is a very good point you made. They try to find out the rate. We do too. In the small appliance business, 40 percent of the business is done in November and December.

MR. WHITELEY: I am speaking of a price basis.

MR. VANMELL: To manufacture products for December we have to start doing it early in the year. We try to divide the work load to keep our people employed all twelve months of the year. Now, the prices utilities charge are uniform. Please do not think I am urging we should be a public utility because my argument is the reverse of that. I am trying to explain how we arrive at a selling price on the Mixmaster and the Iron and this new product.

In the United States there are bodies who have compiled statistics on averages. This is not done for fair trade or any such purpose as that. They are done for auditors' use and management use. Now, I am going to summarize these and with your permission I would like to file them in evidence.

This is a bulletin of the Harvard Business School. It has been brought out every year for many years and is headed "Operating results of Department and Specialty Stores in 1952". These results are based on returns of 349 department stores in the United States, which represent

practically all the important department stores there are. The percentage of gross margin according to this Harvard Survey was 35.25 percent. That is just simply another way of saying that the cost of goods is 65 percent and you have to add that much to arrive at your selling price. Now, how is this money spent. 18 percent was payroll; 2.65 percent real estate costs, which may be rental or amortization ; advertising 2.7 percent -- a surprisingly small figure in view of what some people think -- taxes 1.8 percent; services purchased 1.3 percent; all other expenses 4.4 percent. There was a net gain before Federal Income Tax of 4.56 percent, but the net gain after Federal Income Tax was 2.3 percent. I do not have the results for 1953 yet.

MR. WHITELEY: That average would embrace a great many different departments.

MR. VANMELL: Yes, sir.

MR. WHITELEY: And those departments may vary in regard to the average margin?

MR. VANMELL: Yes.

MR. WHITELEY: And in each department store?

MR. VANMELL: The very word "average" means you put together quite a number of variables to arrive at an expectancy. There might be a store that could operate at 30 percent or 20 percent and there might be a store that has to get 40 percent.

MR. WHITELEY: You might have an Art Gallery in there with a mark-up of 100 percent and a groceteria with 12 percent. If you had only two or three departments it would be different but you have 300.

MR. VANMELL: Regardless of how many you have each department store has an average for each department.

THE CHAIRMAN: I think what Mr. Whiteley is wanting to get at is, it is not the total average for the department store but the average in the department which is going to handle these goods. It can be quite a different thing.

MR. VANMELL: When you are in practical selling and first approach a department store, they look at your price schedule and if it doesn 't meet with ~~their~~ overall cost the selling job is extremely difficult because they know throughout the store the Cigarette Department will have a tiny mark-up and the grand piano department will have a tremendous mark-up, but throughout the store they have to average 35.5 percent.

MR. WHITELEY: Unless their business shifts one way or another so some departments which are profitable and will have a lower than average mark-up might still give an average result.

MR. VANMELL: Each of them have departments which are unprofitable. They might be carried for prestige.

THE CHAIRMAN: A volume entitled "Division of Research, Harvard Business School", containing table referred to as Exhibit I on Page B-1, will be marked as Exhibit T-16.

EXHIBIT NO. T-16: Volume entitled "Division of Research, Harvard Business School", as above.

MR. VANMELL: The next standard statistical publication I would like to refer to is entitled

"Operating Results of Limited Price of Variety Chains" which covers 5 and 10 cent stores and Kresge's. This is an annual publication by the Department of Research of the Harvard Business School. In these stores the costs are somewhat higher, they are 37.28 percent. I won't elaborate on those figures.

THE CHAIRMAN: Operating Results of Limited Price of Variety Chains, 1952, containing table referred to will be Exhibit No. T-17.

--- EXHIBIT NO. T-17: "Operating Results of Limited Price of Variety Chains" as described above.

MR. VANMELL: Now, not only for the additional wealth of material contained but because it shows a cross check by other statistical agencies on those figures, I would like to discuss another report, and it is the 1952 edition of the Departmental Merchandising and Operating Results. They break down the figures in various ways and will answer some of the questions raised by the distinguished member of the committee on departments.

On page 23 of this study is a total of gross margin expressed as a percentage of sales broken down into Federal Reserve Districts throughout the United States and which shows a low of slightly more than 34 percent in Philadelphia to a high in the almost neighbouring city, Richmond, Virginia, but the United

States average is 35.5. There is a total on page 27 for the period 1935 to 1951, and it is very interesting to note throughout all these years of depression and war and changes that the gross margin expressed has remained very constant. In 1935 it was 35.5 percent; in 1936 it was 36.1 percent; in 1937 it 36.1 percent; in 1938 it was 36 percent; in 1939 it was 36.7 percent; in 1940 it was 36.8 percent; in 1941 it was 38.3 percent; in 1942 it was 38.7 percent; 1943 it was 38.9 percent; 1944 it was 38.9 percent; 1945 it was 38.6 percent; 1946 it was 36.7 percent; 1947 it was 36.2 percent; 1948 it was 35.8 percent; 1949 it was 35.3 percent; 1950 it was 36.9 percent; 1951 it was 35.8 percent.

You may enquire why did these costs remain the same or less throughout the United States with its vast diversity of problems and I think they remained the same because of the play of other averages which you cannot escape. Each reputable store is faced with precisely the same burden of taxes; wages and labour and help, by virtue of the great unions ^{and} tend to become equal throughout the United States and to make sure they do not fall below a certain minimum we have the Minimum Wage laws. The biggest item is wages. They are fixed and taxes are fixed. Insurance rates are pretty much the same throughout the United States. Utility rates are pretty much uniform for light, and gas, and telephone, and they have more or less the same real estate taxes. There isn't much room for difference there because you are faced with fixed costs.

THE CHAIRMAN: In regard to wages I was always under the impression that wages in the southern states were somewhat lower.

MR. VANMELL: You might find regions where they are lower but since the imposition of the \$1.00 minimum wage law, they do not tend to vary very much. There was a time when the southern wage rates were lower and industries followed them down and the unions followed them down with a very short lag and they tended to even out so I would say for practical purposes, wage rates throughout the United States are quite comparable.

THE CHAIRMAN: Departmental Merchandising and Operating Results, 1952 Edition will be marked Exhibit T-18.

--- EXHIBIT T-18: 1952 Edition Departmental
 Merchandising and Operating
 Results.

MR. VANMELL: Now, let us get down to some of the smaller specialty stores. These appliances, as you know, sold in chain stores and in electrical appliance, radio and television stores, and the Shavemaster is sold in utility stores and drug stores. I have a statement of the 1952 costs of National Appliance, Radio and TV Association and this gets down to a different type of store. Here they have the national averages through 1946 to 1952. In 1952 the cost of goods sold was 68 percent, the gross margin 32 percent and that yielded a net operating profit of 3.2 percent. These figures have remained remarkably constant. They have come down a bit. It somewhat

parallels the figures I read to you on Department and Specialty stores.

THE CHAIRMAN: The 1952 cost of doing business survey will be marked Exhibit T-19.

---EXHIBIT T-19: 1952 Costs of doing business
National Appliance, Radio and
TV Association.

MR. VANMELL: Now, just to round out the picture, I said our Shavemaster and Baby Bottle Warmer are sold in drug stores. I have here the Lily Digest and this is a report for 1952 and it reports on averages from all the stores, with 1,305 reporting. The cost of goods sold was 66.8 percent, the gross margin was 33.2 percent.

Now, on this they break down how that gross margin is spent. The proprietor's salary is 7 percent; employees' wages 10.6 percent; rent 2.2 percent; heat .4 percent; taxes and license .9 percent; insurance .5 percent; interest .1 percent; repairs .5 percent and so on, and the total expenses are 27.3 percent to yield a very modest profit, and I would like to file this with the Commission.

THE CHAIRMAN: The Lily digest of drug store income for the year 1952 will be filed as Exhibit T-20.

---EXHIBIT NO. T-20: Lily Digest of Drug Store
Income for 1952.

MR. VANMELL: Now, gentlemen, those are the business facts of life from the distribution side, and when we view our problem of how we are going to

induce thousands of dealers to stock our appliance so we can invest in the kind of equipment to produce fine appliances that stand up for 15 or 20 years, we have to induce many dealers simultaneously to handle this line. These averages are something that cannot be explained away or forgotten because in communities throughout Canada and the United States each store which is an average store has that cost of doing business and unless you get that in his sale price he will fail.

Life in Canada undoubtedly would be not as pleasant without large department stores. Life would be quite different without drug stores. You wouldn't like it if one discount drug store in the centre of Toronto put the rest out of business.

Now, these wages all contribute to the community.

MR. WHITELEY: What was the last point you made?

MR. VANMELL: The last point was we wouldn't like a civilization in which we did not have stores reasonably handy. I say wages paid by many small stores and large stores are a considerable asset to the community.

MR. WHITELEY:

The more you have the better you would be off.

MR. VANMELL: To a point, then averages will teach you it will reach a curve, and there is a point of diminishing returns. There are a few exceptional ones and a few bad ones.

THE CHAIRMAN: What happened to the bad ones in law school.

MR. VANMELL: Some turned out to be remarkably good salesmen for the Sunbeam appliances.

THE CHAIRMAN: But they are weeded out.

MR. VANMELL: Our system is such that our lawyers can have their jobs and hope to practice. I am not one of the brilliant ones like Mr. Cohn. I am just an average lawyer and I feel happier and sleep better too.

I was getting at the point that in much of this discussion that has taken place in Canada and the United States and the United Kingdom, we have talked about the consumer as if the consumer was a man all by himself. It is the consumer that wants to buy and we have to give a good price to the consumer. But we always forget there are two sides, and each consumer is in some manner a producer. A man who works at Sunbeam (Canada) during the day is a producer. He has a vital interest in having the products of his hands sold. He has a very vital interest in having it sold in big quantities so there is no work lay-off and the union committees we deal with are most anxious to learn whether we can see far enough into the future to assure employment for the rest of the year. I think it is a great mistake to use the word "consumer". He makes something or provides services and he gets paid. Now, sometimes people fall into a fallacy when they stress the purchaser angle. Ten days ago I was testifying before a Senate Committee on fair trade and an economist there said that all these other stores were inefficient and the discount houses turned them over and therefore, while increasing purchasing power, the purchasing power to the consumer will be increased, but he completely forgot when the other stores went out of business these clerks were discharged and they lost a considerable amount

of purchasing power. There isn't any magic by which we can wave a wand and say we are going to reduce the price to the consumer.

MR. WHITELEY: When they introduced mechanical manufacture of glass, practically all glass blowers lost their jobs. You wouldn't advocate going back to glass blowers.

MR. VANMELL: We are advocating the right to hire our own salesmen.

MR. WHITELEY: Surely all progress means that somebody has been replaced and the products made were made so much more efficiently they provided much more scope for employment than existed before.

MR. VANMELL: If there is purchasing power on **Monday** of \$100,000, and on Tuesday you eliminate 90 percent of the stores, your remaining 10 percent sell that many appliances and there is still \$100,000 purchasing power, but it has not been increased. We say these people will perhaps overnight go and find other jobs. If that was the situation you would have the cost of labour going up because of the other jobs being available. You cannot increase purchasing power simply by monopolizing the trade, we increase our overall purchasing power by creating new services and new products.

MR. WHITELEY: And by reducing costs. The introduction of diesel engines on the railways has resulted in considerable unemployment but that made it possible to transport goods more efficiently.

MR. VANMELL: It has conversely increased employment in the chemical and oil companies and in the

engineering field. In General Motors they have decreased the income of all locomotive works but increased ^{other} it in the/General Motors works.

MR. WHITELEY: There is no question the persons affected may suffer but the whole process must be one of advancement.

MR. VANMELL: That is right and the process must take place by rather gradual steps. There is gradual progress constantly being made but that progress in itself is reflected in averages from time to time. A big department store is trying to lower their cost of doing business by going out into newer communities and things like that. They are working on various service projects and I think they will gradually succeed, and as they succeed we will lower our mark-up to reflect these averages. Our cry is we do not want to be stripped over night of our experience and hurt.

Now, the enquiry is made as to how we are hurt. The Canadian situation, I estimate, is very similar to that in the United States in 1950 and just before 1950. I think the situation here is on the verge of serious trouble. It is well launched, ^{but} it hasn't yet resulted in loss of units sold.

I would like to tell you what happened in the District of Columbia. The District of Columbia is roughly ten square miles area, carved out of the State of Maryland which has not fair trade laws. It is populated largely by government workers and has a market of almost two million people who have steady jobs with steady incomes. Now, up until 1949 our products were

in short supply. There was no price cutting problem despite the fact we had no fair trade law. It was about that time it began to break out. They started to cut the suggested list prices because they had in bordering states the fair trade prices. There were 120 hardware stores that were handling our appliances, about 150 appliance stores, 200 drug stores, 4 department stores and 180 jewelry stores, a total of 650 stores serving a population of two million and they were all making a good living so far as handling Sunbeam was concerned because the suggested list price covered the cost of doing business, and gave them a profit. These discount houses started with small cuts, then jumped to 20 percent, then 25 percent and began to fight among themselves. In fairly short order there were about 20 discount houses getting the cream of our business. These 650 other stores saw the products gathering dust on their shelves. They said there were two alternatives, one to wait for someone to come in and buy or to cut the price and get out. Some got out and some still have appliances on their shelves.

So now we arrive in 1954. Instead of 650 stores handling the Sunbeam business, there are 20 discount houses that do 90 percent of our business. The District of Columbia was a laboratory for us. We had heard many assertions if the prices were lower more goods would be sold. It doesn't work out that way. In 1952 the sales to distributors were \$613,00 and in 1953 they dropped to \$545,000. This was a drop of 11 percent in the District of Columbia business. At the same time throughout the

United States, Sunbeam, Chicago, business increased for the year 15 percent. The spread is measured by 26 percent. We found out to our own satisfaction what happens in an area where there is no fair trade, where we cannot exercise the right of refusal to sell.

Now, gentlemen, I hope you will believe the management of Sunbeam are not stupid. We have created a company pretty much out of nothing in 1920 and we think we are reasonably intelligent and if we thought for one moment turning these things loose to discount houses would sell more units we would be quite willing to do it, but you just can't do it. Your sales drop off. I do not have the figures for the first part of 1954 excepting to say orders on the basis of January and February business are now being cancelled by department stores completely. One of the biggest department stores has discontinued Sunbeam altogether. One department store used to be able to move about 1200 Mixmasters a year and last they ordered 100 to try to start a price war and they still have about 30 of them on their shelves. It is perfectly true there are customers who will come along and pay the lowest price but that isn't the kind of business a store can thrive on, so we have learned in the actual laboratory of experience that price cutting hurts us severely and drastically. The discount houses themselves have fallen into battle and one had the nerve to suggest to us we should do something to stop these people going beyond 20 and 25 percent. Two of them have gone bankrupt and a third was absorbed by another chain. It is down to the point where one major

dealer has an old house and on the second floor he has all Sunbeam appliances shown in his window. Downstairs he has a different stock and Mixmasters sell for \$29.95. He may be able to get an illegal discount from some distributor but in any event he will sell it to the consumer for \$30.14 and theoretically he is making 19 cents on the transaction.

MR. WHITELEY: What were the figures you gave earlier?

MR. VANMELL: For 1952 our sales in the District of Columbia were \$613,000; in 1953 they were \$545,000.

Now, there is the picture, gentlemen. We wouldn't be wasting our valuable time and yours and the time of any other people if we thought discount selling would move the appliances off our production lines.

I was going to explain to you how we produced and make such a product but I heard the gentlemen from the Laundry Machine Association this morning and they covered that. I would like to carry the thing further and show you an item that is going to be produced in Canada.

May I say we invented the Mixmaster and after we invented it and got it on the market you can well imagine our competitors were hot after us to do the same thing. Westinghouse, General Electric, Frigidaire and a number of others and they all offered various features. Most of these reputable companies models were all good for the job they were designed for. The consumer had quite a choice. This is not the same Mixmaster it was in 1930; it was much smaller then and couldn't do the jobs this

one can do. First of all, we provided jobs that had never been provided before; we provided a useful thing for the housewife; we stimulated other industries to extend their efforts to try to beat us and that in turn impelled us to try to improve this thing. There are now something like 5 million of those in homes in the United States and we have since brought out a smaller model for the apartment dweller. That is made in Canada and I don't know how many are in the homes in Canada. The first housewives who bought them were skeptical but ten years later they said Sunbeam knows how to make a product. Of the profits we made, some went to stockholders, some were **plowed** back into the business. We have an Experimental Department looking for something new all the time and some years ago the Research Department found 80 percent of cooking was done, not in the stove, but on top of it and most of it was frying. They found that most errors in cooking were due to not using the proper temperature. If pancakes were done too slowly they burned and were sticky, and your famous chefs are those people who seem to sense by intuition how to get a correct temperature. We said, why can't we bring this in, we will improve everybody's disposition. They decided there was a market for a controlled heat frying pan. There was nothing like it then; there is nothing like it now. They worked for four years to bring this about. It is water heat. The biggest thing they learned was a housewife will not use such a frying pan if she cannot clean and scrub it and the big point was to get that handle hermetically sealed so you could put it in water and scrub

it. I am not filing that model as an exhibit, gentlemen. It has been on the market in the United States for a few months now and we are preparing to put it on the market in Canada soon. The consumer will see our national advertising such as that over there, and will know that this is something new and like all housewives, she will need to be sold, she will not, like our friend who says he sees the ad and immediately goes out and buys one --

MR. WICKWIRE: I was just going to order one now.

MR. VANMELL: Now, here again we are faced with the problem of tooling up. You have aluminum costs, bakelite, and there is an inside control device and the like. That cost will be extensive and we will have to set up an assembly line that can roll out thousands a week but at the same time we have to go to thousands of dealers throughout the United States and Canada who will simultaneously put that on their shelves so when the consumer sees that she comes in and examines it. We will send people in to demonstrate it and actually cook on it. That is the kind of distribution problem we have. We feel we cannot do that at all unless all the good stores are willing to participate in this venture. The retailers are in a partnership with us and they are introducing this product. We will have other new products maybe two years from now and we will have something that will be maybe another golden egg, but we have to keep that goose healthy. We have found by laboratory experience in the District of Columbia we cannot introduce that there.

Now, how do we introduce it here? There is a

town called Joliet in Illinois, about 50 miles out of Chicago. We frequently use it because it is a representative community. It has a standard number of stores. We have a system where we have a promotion in which we get all retail stores, hardware stores and others, to simultaneously demonstrate it and on February 1st, 1954, the man who bought the Herald News saw the Sunbeam Controlled Heat frying pan being offered for sale. At the same time we contributed a large advertisement which we paid for ourselves to emphasize the story. Here we are on each page. On page 1 is the hardware store, on the next page an electric, plumbing and heating store, the next page we have a public service company, then we have an appliance and hardware store. On each page you can see there is some store handling the new Sunbeam appliance. I will file this as an exhibit so you may have it to see how we go about bringing this news to the consumer. Here is one that took a whole page, and so it goes. Here is a page we, ourselves, paid for, so throughout this community of Joliet this appliance was put on sale simultaneously by many stores. Now, it is quite true we had the same price in all those stores and the way they competed with each other there was by way of actual selling. They didn't compete in prices. In the District of Columbia, we couldn't go and get 20 dealers simultaneously, they would say, "What is the use; if I teach them how to cook on that, they will run down to the discount store and I will look silly".

In all areas where this price cutting takes place, active selling disappears.

THE CHAIRMAN: Copy of the Joliet Herald News dated February 1st, 1954, will be received and marked as Exhibit T-21.

---EXHIBIT NO. T-21: Copy of Joliet Herald News dated February 1st, 1954.

MR. VANMELL: Now, I would like to go back to the point I originally made that we urge a return to the common law.

MR. WHITELEY: Just before we leave this marketing feature; have you made any attempt to limit the supply of goods in the District of Columbia?

MR. VANMELL: No.

MR. WHITELEY: Of these particular goods?

MR. VANMELL: No, those are available in the District of Columbia. They are available in the sense that we sell them to our distributors. The point I make is that we cannot get that kind of promotion or development work there.

MR. WHITELEY: You cannot build up a market quickly?

MR. VANMELL: No, it is quickly going the other way. If we go into a community like Joliet and start from zero and that promotion exceeds a certain amount of sales then we are going ahead. If we go into the District of Columbia and only get tiny sales we are in effect going backward.

What we urge is going back to our common law rights of which there were two, one was the right to refuse to sell and the second was the right to confine

your distribution by contract to these wholesalers who are willing to so contract.

Now, another of these rights I think was best described by a judge in Miami in the case of Sunbeam Corporation vs. Chase & Sherman, Incorporated. It is cited in 1953 Trade Cases, paragraph 67524.

We brought suit against the discount house who had signed a contract and thereafter violated it and he defended on the ground that under the Florida Constitution and Florida legislation the contract was in restraint of trade. The trial judge upheld our contract and adjointed him and he wrote a very interesting decision. I will read it in part because it stresses the common law right for which we are applying:

"We find at the outset that the Florida Fair Trade Act does not offend the Federal Constitution. The similar Illinois Fair Trade Act was upheld as constitutional by the United States Supreme Court 'Old Dearborn Distributing Company vs. Seagram Distributors Corporation, 299 U .S. 183'.

We further point out that Section 10 of Article I of the Constitution of the United States provides that the right of contract shall not be impaired.

It seems that fair trade contracts were lawful contracts under the common law (Grogan vs. Chassee, 156 Cal. 611; Garst vs. Harris, 177 Mass. 72;

"Clark vs. Frank, 17 Mo. App.602;
Murphy vs. Christian Press, 56 N.Y.S.
597; Fisher Flouring Mills Company vs.
Swanson, 72 Wash. 649).

It was not until 1911 it was decided
the Sherman Anti-Trust Act reversed the
common law by forbidding resale price
maintenance contracts in inter-state
commerce (but not in the separate states,
as to intrastate commerce)(Miles vs.
Park, 220 U.S. 373).

Meanwhile, in 1937, the Congress
enacted the Miller-Tydings Amendment
to the Sherman Act, 15 U.S.C. 1,
expressly validating fair trade contracts
in inter-state commerce in those states
whose statutes, laws or policy permitted
the same kind of contracts. (See Sunbeam
vs. Payless Drug et al, Supra.)"

I may say we have had many cases in the courts.

THE CHAIRMAN: You are not suggesting something
similar to the McGuire Act here?

MR. VANMELL: I do not think it is necessary if
we rescind Section 34 and go back to the common law
right, it would not be necessary. It was necessary in
the United States.

The Sherman Act was enacted in 1890 and for many
years after that was being enforced. In 1911 Dr. Miles
came before the court and the court in a split decision
decided the Sherman Act was invalid. Mr. Justice Holmes,

who many of us revere, wrote a dissenting opinion in which he pointed out in his opinion this was a strange construction. This led to the Miller Tydings Act in 1937 intending to wipe out the Dr. Miles case.

THE CHAIRMAN: The great distinction is the non-signer clause, surely.

MR. VANMELL: Yes, I will go into it a little later if you want.

THE CHAIRMAN: You do not think it is necessary here?

MR. VANMELL: I do not think so.

THE CHAIRMAN: The McGuire Act is not really necessary.

MR. VANMELL: Not for Sunbeam. We designed this universal contract system in which we limit our distribution to people. I think it may be helpful to you gentlemen, I have a copy of the printed complaint that was prepared by us in the United States District Court in San Francisco to enforce this contract system. We enforced it against a man who had not signed a contract but who was interfering with contracts. This has attached to it our contract, our trade mark, samples of price cutting and shows what happened when some of this price cutting broke out.

THE CHAIRMAN: The complaint in the United States District Court for California, Sunbeam vs. Payless Drug Stores and others as defendants will be marked as Exhibit T-22.

--- EXHIBIT T-22: Complaint in U.S. District Court, Sunbeam vs. Payless Drug, as described above.

Now, the Defendant who had not signed a contract, had obtained our merchandise surreptitiously by inducing some distributors to violate their contracts and getting a retailer to act as go-between. They brought a motion to dismiss that complaint on the ground that our contract was a violation of the law in restraint of trade. The United States Court rendered a decision in our favour and it is reported in 1953 Trade Cases, paragraph 67492.

There is an interesting discussion in this opinion and I would like to refer to this opinion, and I am quoting:

"Counsel argue and it seems persuasive to the court that the basic legal problem is the private right of contract and that this right is the basis of a free enterprise system.

In the socialist or planned economy the basic assumption seems to be that the citizens are not smart enough to handle their own affairs and allocate the spending of their own money. The planned society, with its assumption that the people are basically incompetent, turns the manufacturer into what amounts to a public utility. The American system is entirely different. We believe that our people have the intelligence to handle their own affairs and spend their own money. We think that they are smart enough to decide whether to spend their money on a radio, or television

"set or a piano, or a Sunbeam Mixmaster or any of the several hundred thousand goods that are for sale.

I firmly believe that the citizens of Florida know how to spend their money intelligently -- that they have the good sense to refuse to buy a product that is priced too high. If enough people think the fair trade price of Sunbeam Mixmaster is too high and so refuse to buy it, but spend their money on a competing mixer, or something else, you would soon see prices tumble.

The only concern Florida law has is (1) that no manufacturer shall eliminate all his competitors so that our citizens have no other choice, or (2) that the manufacturer shall not conspire or horizontally contract with each other and agree to charge the same price so that our citizens have to pay a monopoly price."

Now, the Defendants appealed from this decision to the Florida Supreme Court which denied the appeal and this decision is accordingly the law in Florida.

Now, before closing, it just came to my attention yesterday that there is a very nice dilemma in the words of Gilbert and Sullivan in the Combines Investigation Act because Section 34 very emphatically provides:

'A manufacturer shall not in any manner

permit or encourage or induce or in any other manner try to control the resale price, and he goes to jail if he does.

Now, I call your attention to Section 498A:

"Every person who is a party or privy to, or assists in any sale that discriminates, to his knowledge, directly or indirectly against competitors of the purchaser, in that any discount, rebate, allowance, price concession or other advantage is granted to the purchaser over and above any discount, rebate, allowance, price concession or other advantage, available at the time of such sale to such competitors in respect of the sale of goods of like quality and quantity."

Any person who discriminates in price to the dealer also goes to jail.

Now, gentlemen, under Section 498(A) and we have over 100 dealers, if we know one is offering a better price and thereafter if we continue to sell him merchandise, are we not guilty of being an accessory?

THE CHAIRMAN: There is an element in there about quantity, isn't there?

MR. VANMELL: A uniform discount or quantity rate. We would have a very interesting situation with four or five distributors in Toronto if we find one is supplying a discount house, then, are we not an accessory?

THE CHAIRMAN: I would not think that would make

you an accessory.

MR. VANMELL: It looks to me, gentlemen, like we are violating this law, and I submit it was never the purpose of the Combines Investigation Act to get a manufacturer into jail one way or another.

MR. WICKWIRE: I would like to point out to you, as I pointed out to a gentleman this morning, that that was not the purpose of Section 34. The purpose of Section 34 is stated by the Prime Minister of Canada on October 15th, 1951:

"I do not think that this is going to have a very substantial effect on the index of the cost of living. I think it is apt to bring about some changes in resale prices because I do know there are instances where the spread between what the consumer has to pay and what goes to the primary producer seems to be inordinately large."

Now, that was the purpose of Section 34.

MR. VANMELL: Well, that does relieve one anxiety I had.

MR. WICKWIRE: Now, I was delighted to hear you refer to a decision of Mr. Justice Kekewich in the case of Elliman Sons & Company vs. Carrington & Son, 2 Chancery Reports, 275. Was that case appealed, do you know?

MR. VANMELL: I cannot tell you very definitely. We ran into that case some years ago preparing some brief and I am quite sure it was searched for, but I cannot say definitely at this time.

MR. WICKWIRE: They used to suggest to us in our law school that Mr. Justice Kekewich was the most over-ruled judge in English history. At any rate, you say in that decision there was a contest between the liberty of the manufacturer and restraint of trade.

MR. VANMELL: I do not think it was a contest.

MR. WICKWIRE: Now, in that case they decided in favour of the liberty of the manufacturer?

MR. VANMELL: Yes.

MR. WICKWIRE: As a result of that would there not be a tendency to create a monopoly in manufacturing?

MR. VANMELL: I am glad you brought that up. They say, "You people have a monopoly".

MR. WICKWIRE: I do not say you have one. I say as a result of that decision would that not tend to create a tendency to have a monopoly?

MR. VANMELL: That decision only says that the man who makes the embrocation can fix the price. I do not think that tends to a monopoly.

MR. WICKWIRE: Does it restrict the freedom of the retailer?

MR. VANMELL: If you express freedom in the sense that a retailer can elect whether he wants to sell his product or not, his freedom has remained intact. If you are trying to suggest the retailer has the right to insist that Mr. Elliman sell it to him --

MR. WICKWIRE: I suggest it would restrict the freedom of the retailer.

MR. VANMELL: I cannot accept any such suggestion because that would turn the manufacturer into a public

utility.

THE CHAIRMAN: There is another angle that is not quite answered by your argument, it seems to me. The goods are sold and kept in the hands of the dealer and they are his property. Under resale price maintenance you would prevent him from exercising the ordinary right of the owner of property to sell it. There is a restriction on his liberty in that direction.

MR. VANMELL: I would like to read to you how that point was answered in the United States Supreme Court.

THE CHAIRMAN: There is a limitation you are placing on the retailer. I am not saying it shouldn't be placed on him but it is restricting his liberty in some sense.

MR. VANMELL: This is the case of Old Dearborn vs. Calvert Distilleries. It went to the United States Supreme Court and is reported at 299 U.S. 183. This case was decided in 1936 and it says:

"We are here dealing not with a commodity alone, but with a commodity just the brand or trade mark which it bears as evidence of its origin and of the quality of the commodity for which the brand or trade mark stands. Appellants own the commodity; they do not own the mark or the goodwill that the mark symbolizes. And goodwill is property in a very real sense, injury to which, like injury to any other species of property, is a proper subject for

"legislation. Goodwill is a valuable contributing aid to business -- sometimes the most valuable contributing asset to the purchaser or distributor of commodities. And distinctive trade marks, labels and brands, are legitimate aids to the creation or enlargement of such goodwill. It is well settled that the proprietor of goodwill 'is entitled to protection as against one who attempts to deprive him of the benefits resulting from the same, by using his labels and trade mark without his consent and authority.'

Then some further cases are cited and it goes on: "The ownership of the goodwill we repeat, remains unchanged, notwithstanding the commodity has been parted with."

And further on:

"There is nothing in the Act to preclude the purchaser from removing the mark or brand from the commodity -- thus separating the physical property, which he owns, from the goodwill, which is the property of another -- and then selling the commodity at his own price, providing he can do so without utilizing the goodwill of the latter as an aid to that."

There are two properties there. There is a trade mark and property rights.---

You see, under American law, from the very

beginning it has been recognized you can get out from under a trade mark by obliterating the trade mark and selling it on your own reputation. If these discount houses want to take this product and take a little electric burr and grind off the name "Sunbeam" and tear up our warranty card and then sell it on his own, I think that would be his right.

MR. WICKWIRE: You do not really believe that. Wouldn't you have remedies against such a person?

MR. VANMELL: I am not that familiar with your trade mark registration law. There may be something in the law about it.

MR. WICKWIRE: Isn't there in the United States?

MR. VANMELL: Let me answer that by saying that I testified before the House of Representatives Committee and I had in my pocket a cigarette lighter made by Thorens, the trade mark of a reputable Swiss Company. Marshall Field got a lot of those and sold them at a considerable loss.

MR. WICKWIRE: My question is, is there not a remedy in the United States for a person who does that sort of thing to another person?

MR. VANMELL: If someone tried to put his own trademark on it, that would be illegal, but if you simply burr off the "Sunbeam" trade mark and sell as is, I do not think he has violated any of their laws.

MR. WICKWIRE: Getting back to Elliman vs Carrington & Son, does that decision follow through in which you say a manufacturer under common law can set up resale price maintenance on his article -- does that not tend to create

a monopoly system?

MR. VANMELL: Not in the least. The very essence of free enterprise is that people are capable of contracting. A contract is a promise to do something in the future and to the extent of the promise you limit your own activity.

MR. WICKWIRE: I understand in some, if not all, of your fair trade laws, the manufacturer has a right of action against any seller even if he has not entered into a contract with him.

MR. VANMELL: Provided, however, that he has notice before he buys the goods that there is such a price restriction. If he has notice with respect to these goods, he is bound by the contract.

MR. WICKWIRE: But there is a right of action against him whether or not he has entered into a contract.

MR. VANMELL: Yes, that is right.

MR. WICKWIRE: Isn't that a private system of law created by statute?

MR. VANMELL: I might say we have many such laws and I dare say you have them here in which a notice of rights puts the other party under an obligation to a certain form of conduct. Now, you brought it up and you keep having me throw cases into the record, but there is the case of Lumley and Guy decided in England and that is also favoured in the law schools and I studied it well at the time I had it. I dare say it is the law in Canada.

THE CHAIRMAN: I cannot see how the Lumley and Guy case has any application to the McGuire Act.

MR. VANMELL: Well, sir, the non-signer clause had its direct origin in Lumley and Guy.

THE CHAIRMAN: That is not the same thing as the non-signer clause.

MR. VANMELL: I think that is right in law.

THE CHAIRMAN: It is extended so you can hardly recognize it.

MR. WICKWIRE: Now, you have given us quite an impressive talk on the subject of averages. You do not deal with the average cost of selling Sunbeam in various stores. Perhaps you overlooked doing so.

MR. VANMELL: What you are getting at is you cannot say in this store you have a cost of selling Sunbeam of so and so. If there was a store that handled nothing but Sunbeam that would be possible for them to ascertain. There is no such way. We have to say, "What does it cost you".

MR. WICKWIRE: There are stores that sell nothing but appliances?

MR. VANMELL: That is correct.

MR. WICKWIRE: And the cost in these stores varies considerably.

MR. VANMELL: In any given store they can vary as day and night but the average you will find is in the figures that have been filed.

MR. WICKWIRE: What would you say about a fellow who could sell below average, should he be required to sell his product at an average cost?

MR. VANMELL: If he wants to handle Sunbeam, yes.

MR. WICKWIRE: That is in the United States.

MR. VANMELL: Yes.

MR. SYMMES: And we hope in Canada also.

MR. WICKWIRE: You have ways and means of keeping it away from him.

MR. VANMELL: No, we have explored that quite a bit with Canadian counsel and decided there was nothing in the law that would permit us to do so. We are wholeheartedly observing the law even though it hurts.

MR. WICKWIRE: Has it hurt your sales figure in Canada.

MR. VANMELL: You remember I said at the outset that Canada is now on the verge of the situation that existed in the District of Columbia in 1950. Up through the end of last year we hadn't yet been hurt. The surveys I asked them to make are quite conclusive at the moment that the percentage of volume of units being handled is gradually shifting to the discount houses in Toronto area. That, to me, is an old familiar picture that I have seen develop in New York and San Francisco. The first stage is well along in Toronto.

MR. WICKWIRE: The figures you have to date will not bear you out but you have fears of it.

MR. VANMELL: The figures as to developing concentration will certainly bear me out.

MR. WHITELEY: While we are on that point, have you any data as to the position of your company in a so-called non-fair trade state?

MR. VAN MELL: The only place we worked it out was in the District of Columbia. We had figures for Texas, Missouri and Vermont, and Vermont is an old New England

community and we have practically no trouble there.

MR. WHITELEY: They behave in Vermont, do they?

MR. VANMELL: Yes, they do.

THE CHAIRMAN: The same as the Maritimes.

MR. WICKWIRE: I was delighted to hear Vermont and the Maritimes really behaved themselves.

MR. VANMELL: We found we had lost business in proportion while the rest of the country was coming up. Our sales declined but not as startlingly as in the District of Columbia. The President of our company is continually after me to find some way to do something about it and I have to tell him I don't know how within the law.

MR. WICKWIRE: You have laid great emphasis on the extensive distribution of your product by many dealerships and I take it from that that your product is not only advertised in appliance stores but drug stores and jewelry stores and hardware stores?

MR. VANMELL: Yes.

MR. WICKWIRE: You are not concerned with service in your product, it is built in.

MR. VANMELL: Thank you for the compliment, but we are vastly concerned with it. Each of our appliances carries at least a one year guarantee and any defects that appear for any reason whatsoever during the first year will be replaced free of charge. We maintain very extensive service departments in the United States. We have our own subsidiary or experienced repair people under contract, and these repair stations are scattered throughout the whole country.

MR. WICKWIRE: Is that the only way to obtain extensive distribution?

MR. VANMELL: In our opinion, yes.

MR. WICKWIRE: It was suggested here yesterday by representatives of Canadian General Electric -- you have heard of that company -- that the best method of advertising in their opinion was the satisfied housewife who purchased the appliance, telling her friends.

MR. VANMELL: I see they copied one of our slogans because in the sales department they are constantly harping on the fact that one Sunbeam appliance sells another.

MR. WICKWIRE: That has been your experience?

MR. VANMELL: That has been our experience.

MR. WICKWIRE: Doesn't the extensive distribution you speak of and the fact your product is on everybody's shelf tend to speed up distribution?

MR. VANMELL: We think it vastly speeds up distribution. Without it, we would have the distribution we have in the District of Columbia.

MR. WICKWIRE: Your opinion is if you had fair trade in the District of Columbia the higher prices would sell more of your products?

MR. VANMELL: Yes, I might interject here we are constantly experimenting because our job as management is to sell as many as we can and still make a profit. Some years ago we had a Shavemaster, one that sold for \$14.50 and one that sold for \$7.00; there was little difference in them. The shaving heads were identical but the beauty of the case was considerably different

and we thought we would supply the one at \$7.00 to one type of person and supply another type of person with the one at \$14.50, but we found we didn't sell the \$7.00 item. I talked to our Western Sales Representative, Mr. Moore, and Mr. Moore said he couldn't believe ^{it} and he stood a week behind the counter of a department store and he would go to work on every prospect and sell him the \$7.00 razor and on the way to tying it up he would say, we have such and such a razor here which is \$14.50. He said it was a much handsomer case and nine out of ten people would say, "I want that one". He told them it is the same shave head but the customer wouldn't be budged. There are many factors in price that do not fit in the simple economic text books. Do not ask me why a man would prefer to pay \$14.50 when he could get practically the same thing for \$7.00.

THE CHAIRMAN: Isn't there something in advertising to the effect that price really determines value in the mind of the public, and if the price of one article is \$14.50 and the price of an article designed to do the same thing for \$7.00 you would have a good deal of trouble convincing them that wasn't so.

MR. VANMELL: That is one part of consumer psychology.

MR. WICKWIRE: Tell me, are there a big group of discount houses in the United States?

MR. VANMELL: Yes.

MR. WICKWIRE: Are your company having any trouble with appliances getting into their hands?

MR. VANMELL: We have brought suit against about

300 of them. The majority of discount houses are not carrying Sunbeam goods now but a few of the larger ones have carried them. It cost Master's Ink in New York City, \$16,000 to defend a case.

MR. WICKWIRE: How much did it cost Sunbeam to maintain these prosecutions?

MR. VANMELL: That varies from case to case and it depends on how the case is decided. I couldn't say any single figure.

MR. WICKWIRE: You have been sticking to averages, would you give me the average?

MR. VANMELL: I would say the average cost of these 300 cases since 1951 has been about \$1,500 per case.

MR. WICKWIRE: It is a pretty expensive policing operation.

MR. VANMELL: It is.

THE CHAIRMAN: Do you find as a result of that it is not necessary to engage in as much litigation now?

MR. VANMELL: Yes, because we take such a firm and determined stand. We wouldn't file a case unless we had exhausted every means of discouraging the procedure. I devised the procedure and when a report of price cutting comes in a letter is written and if it persists the salesman in that territory drops in to discuss it with them. We spend considerable time to try to avoid litigation. I would say we may have 15 complaints come in a year for investigation which are given attention. Some of these people stop. Coupled with the strong litigation policy in the long run it hasn't been too costly.

MR. WICKWIRE: I suggest it is fair to suggest that only a big company could undertake the cost of enforcing the policing.

MR. VANMELL: Well, there are so many variables. It depends on whether the goods are luxury or necessity, all these items have to be considered and the principle enquiry is whether he has reached such a prominent position and reputation that his products are being sought after as loss-leaders because of the reputation.

MR. WICKWIRE: Is it a fair question to ask if the cost of policing in the fair trade states has added to the cost of the consumer of the appliance?

MR. VANMELL: No, I don't think so. I think at the factory they tend to think that it is something to deduct from the proportion for advertising because it persuades the dealers we are attempting to prevent them from being undersold.

THE CHAIRMAN: It is part of your cost of doing business, but you reduce your advertising?

MR. VANMELL: Yes, it is considered promotional rather than legal costs.

MR. WICKWIRE: Now, you have referred to some Harvard publication, and I have here an article in the Harvard Business Review. Is that a good publication?

MR. VANMELL: Yes, it is.

MR. WICKWIRE: It is called "Fair Trade Pricing".

MR. VANMELL: He submitted that article to me before it was published. I gave him 15 single spaced pages of comment on it.

MR. WICKWIRE: He says on page 56

"An explanation of the case against loss leading per se i.e. selling below cost and a contention implicitly advanced in support of fair trade legislation is that on each article he sells the retailer should realize a percentage of mark-up roughly equivalent to the overall percentage of sales represented by his operating costs plus a reasonable profit. Fair trade as it is practised in the small appliance field allegedly aids in achieving this end because the percentage mark-up typically guaranteed the retailer is approximately equal to the average retailer's cost of doing business plus a profit of about or 35 to 40 percent in total..

While the logic of this reasoning is apparent it fails to recognize some of the factors involved in setting retail prices: the need to meet competitor's prices, the need to lower prices to move inventories, the varying cost of selling different types of merchandise and the need to obtain higher margins on some items to compensate for higher risks involved in carrying them."

MR. VANMELL: Yes, I suggested the professor didn't know what he was talking about but he didn't agree with me.

MR. WICKWIRE: The time will come when there will be pressure on the manufacturer to reduce his price.

MR. VANMELL: I am not concerned with that so much, what I am addressing myself to now is that the lowest generally known or advertised price becomes the maximum price. In other words, he fixes our price and he fixes it for the purpose of attracting people in the store or monopolizing the general retail trade.

MR. WICKWIRE: I am going to suggest that their purpose, that he might sell 100 of them but two druggists will sell one at Christmas time every second year.

MR. VANMELL: That is quite right but in selling them he will eliminate 100 druggists who are selling two so we have lost 100 sales.

MR. WICKWIRE: He has eliminated the drug store?

MR. VANMELL: He eliminates him for X number of years. If he continues in business the druggist refuses to handle Sunbeam appliances.

MR. WICKWIRE: Why couldn't the druggist handle more Sunbeam appliances?

MR. VANMELL: The druggist looks at his books and says "I have a cost of doing business of 35 percent." He says he has to pay his salary, taxes and interest, license fee, and he is going to bring this Mixmaster price to the discount price. Say he got 100 sales, and 100 other druggists all did it on the same day, they all reduced their price so each one is getting 10 cents ---

MR. WICKWIRE: Now, are you going to say each

dealer is going to sell 100 items?

MR. VANMELL: I suppose he won't do it unless he develops.

MR. WICKWIRE: What you suggest to the Commission as far as Sunbeam is concerned, is the abolition of Section 34?

MR. VANMELL: Yes.

MR. WICKWIRE: Giving the right to the manufacturer to re-establish resale price maintenance?

MR. VANMELL: Yes.

MR. WICKWIRE: Now, are you not asking in Canada more than you have in the United States under fair trade laws?

MR. VANMELL: I don't follow that at all.

MR. WICKWIRE: Has Sunbeam the right in any state to cut off a dealer who sells at a price less than the maintained price?

MR. VANMELL: Under fair trade laws we have that right without question. In the non-fair trade states, we run the risk of anti-trust prosecution.

MR. WICKWIRE: You don't run that risk in the fair trade states?

MR. VANMELL: No.

MR. WICKWIRE: If that is so, wouldn't it be easier to cut dealers off rather than take them to court?

MR. VANMELL: No, because the discounter will seek other suppliers. We are contending with a big price cutter in New Jersey and in the discovery we wanted to find out how he got his merchandise. He got it through a dealer who signed a contract with us. There

are telephone brokers in New York who go around to dealers and try to entice them to supply half a dozen or a dozen and they assemble quantities like that and sell to the discounteers who then use them to make a big splash.

MR. WICKWIRE: And that practice is occurring in the fair trade areas?

MR. VANMELL: Yes, it is. That is the type of people we have to take to court.

THE CHAIRMAN: I am not sure whether it is in evidence as yet, but does your company in Canada deal with distributors or direct with dealers?

MR. VANMELL: Direct with distributors.

THE CHAIRMAN: Do you think the restoration of the common law would give you any protection.

MR. VANMELL: We think it would.

MR. FAVREAU: If you had a contract with a retailer whereby he would agree with you to retail at a certain price wouldn't that be legal under the Combines Act.

MR. VANMELL: I am not sure of that.

THE CHAIRMAN: That completes the hearing and I would like to say on behalf of the distinguished visitor from the United States, we know his primary duty is to represent the company he represents, but he came here from Chicago and gave us the benefit of his lengthy experience that is very greatly appreciated indeed. It was not only of great interest but of great value to us.

MR. VANMELL: I want to thank you for giving us the opportunity to be here.

--- Whereupon the hearing adjourned at 4.25 P.M.

---Page 1200 follows.

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RESTRICTIVE TRADE PRACTICES COMMISSION

LOSS-LEADER SELLING

TRANSCRIPT OF EVIDENCE

Vol. 8

MONTREAL

JUN 7 1954

RESTRICTIVE TRADE PRACTICES COMMISSION

IN THE MATTER OF

an inquiry

Regarding Loss-Leader Selling

Hearing held (in public) in Hearing Room

No. 2, New Court House Building, Montreal, Monday, June 7th, 1954.

PRESENT:

C. Rhodes Smith, Q. C., M.A., LL.B., B.C.L.,
Chairman.
Guy Favreau, J.C., B.A., LL.B.,
Member.
A. S. Whiteley, B.A., M.A.,
Member.

APPEARANCES:

Mr. Paul Gerin-Lajoie - Counsel for the Commission

REPRESENTATIONS:

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Retail Tobacco Association of the Province of Quebec	1202
Represented by:	
Paul Dorion, Secretary	
H. J. Gorfinkel, Honorary President	
J. M. Valieve	
Cecil Dineberg	
L'Association des Distributeurs de Tabac en Gros de la Province de Québec	1402
L'Association des Marchands de Tabac en Gros de l'Est de la Province de Québec	
Represented by:	
A. J. Duhamel	
Benson & Hedges (Canada) Limited	1501
Represented by:	
John Hughes, Vice-President	
Alexander Maclean, Secretary-Treasurer	

MONTREAL,MONDAY, JUNE 7th, 1954

---The hearing commenced at 10.00 a.m.

THE CHAIRMAN: The hearing will come to order, gentlemen. (Spoke in French)

I. I may say in English what I have attempted to say in French, the hearings in this inquiry before the Commission commenced in Ottawa on the 27th of May last. Last week the proceedings were continued in Toronto, and we had many briefs and many witnesses who appeared presenting arguments in respect of their particular industry. We meet now in Montreal for the purpose of obtaining the point of view of industries which believe themselves to be affected by the law as it now stands, either adversely or favourably. Subsequently we will be holding sessions in cities in the western part of Canada, and then we will have our final hearings in Ottawa, which are now scheduled for September. If there are any who are unable to present their cases this week in Montreal, who desire to appear before us, they will be given an opportunity at the final hearings in Ottawa for that purpose, and we will be glad to see anyone there who is unable to present his case now; or, for that matter, anyone who believes, because of something which they learn and which develops subsequently, who would like to make further representations at Ottawa we will be glad to see them

there.

This morning the first representation will be made by the Retail Tobacco Association of the Province of Quebec. We would like to begin by having the names of those who are in the delegation, and to advise that the practice is, unless there are special reasons for departing from it, for one person who is in charge of the brief to read it and to make any comments that he desires during the course of the presentation or at the end of the reading of the brief. Then, any other member of the delegation who desires to add anything may do so, and then we have questions concerning the material that is in the brief in order that we can be quite certain exactly what is intended by the brief and we can get the full understanding of the point of view of those presenting it.

Delegation from: RETAIL TOBACCO ASSOCIATION
OF THE PROVINCE OF QUEBEC.

Represented by: Paul Dorion,
Secretary.

H. J. Gorfinkel,
Honorary President.

J. M. Vallee.

Cecil Dineberg.

MR. DORION: Mr. Chairman, gentlemen, a brief word of thanks to all the interested members here to defend our cause. This brief is being presented in English as it is for the benefit of the majority of the 90,000 retail tobacco outlets across Canada of which the Province of Quebec has 27,000. This brief will be presented in two parts; the first will cover pages 1 to 9, and on being completed will be followed by the figures compiled as requested by the Commission. In the absence of Mr. Jensen, President of the Association, who is now hospitalized, this brief will be read by Mr. H. J. Gorfinkel, our Honorary President of the Association.

MR. GORFINKEL: Mr. Chairman, Commissioners and counsel, this brief will be presented in two parts: The second part will give the figures which were requested by the Commissioners at my last hearing in Ottawa on facts.

"It is impossible to approach the subject of Loss Leaders without first pointing out that Retailing is the one branch of our economy which not alone receives no favours or special considerations from any level of government, but which is legislated against, interfered with and often subjected to punitive taxation.

"The last defence of the retailer was demolished with the passage of the law prohibiting Price Maintenance.

"We wish to list here various measures adopted or permitted by the Government in support of other branches of our economy such as Farming, Labour, Mining or Manufacturing, and we point out that in practically every case, these measures result in increased prices to the consumer. That, in reality, is what the law against Price Maintenance was supposed to combat.

"(1) Purchasing Boards.

(2) Minimum Prices fixed by such
Boards.

(3) Import Duties.

"(4) Subsidies.

"(5) Income Tax Allowances.

"(6) Minimum wage Laws and Collec-
tive Bargaining.

"(7) Moratoria.

"(1) When the Government Boards buy wheat, butter or cheese from the farmer, they guarantee him a sale of these products, even though the government may not be able to resell the products at the prices paid plus carrying charges. Has the government ever guaranteed that the retailer has a customer for his stock-in-trade?

"(2) The prices paid by these Boards become the basis of a minimum price payable by the consumer, even though, in the absence of such Boards, the prices might drop materially. In the case of some Milk Boards, retail prices were established, below which no store could sell the milk or cream. This was done in Ontario to protect the Milk Drivers Union, which feared that a large differential between delivery prices and store prices might be harmful to them. But the retailer must not get together with the manufacturer to set a minimum price.

"(3) Import Duties are a form of subsidy for manufacturers. Without them, our manufacturers could neither compete with the United States manufacturers, who have the benefit of mass production for a nation of 160 million people, nor with the manufacturers of nations with a wage scale far below our own. The duties

help to establish a minimum price in protection of the domestic manufacturer.

"(4) Subsidies have been paid by the Government to various enterprises. Gold Mining is an example. Special freight rates on output of domestic coal mines is another. The practice, in some communities, to grant a low realty assessment to induce a manufacturer to open a plant, is also a form of subsidy. Was any form of retail enterprise ever subsidized?

"(5) Income tax allowances for depletion of natural resources have been allowed to Oil and Mining enterprises but never to the retailer, whose 'natural resources' is the population of a town that may be dying, because the mine closed on depletion of the ore body.

"(6) Minimum wage Laws and Collective Bargaining are a form of Price Maintenance for the Labourer, but denied to the Retailer.

"(7) The moratorium on Farm Mortgages, which enabled many farmers to hold on to their land during the depression, was a life-saver to them. But the retailer, who could not meet his rent or chattel mortgage payments, was allowed to go bankrupt.

"The above measures are mentioned.

not because we find fault with them, but to emphasize the lack of similar protective measures for the retailer. Not alone lack of protection, but interference with his operations makes the lot of the small retailer more and more difficult. With all these handicaps and difficulties facing the retailer, why was his only safeguard, Price Maintenance, made illegal? We will grant that price fixing and price maintenance at excessive, high levels are undesirable, but as this brief is in the interest of the Retail Tobacconists, we may ask, here, whether the retail mark-up on tobacco products ever has been excessive, even during price maintenance days? The answer, of course, is NO, and it can be proven by the prices that prevailed in the trade. Thus, for example, in 1939, when the price of cigarettes was 20¢ a package, the small retailer's gross profit was 3.06¢ per package. In 1954, when the price of cigarettes per package has risen some 65%, namely, to 33¢ per package, the retailer makes only a gross profit of 3.90¢ instead of 5.03¢ per package, which would reflect the normal increase of profits he would be entitled to, at least on the increase of price. We must underline the fact that the aforementioned 3.90¢ gross profit per

package is based on what the normal selling price of the package should be, and not in virtue of the cut prices indulged in by those using cigarettes as Loss Leaders. It becomes apparent that if the small retailer were to meet this competition, he would actually be selling his cigarettes at a loss of 1/10¢ per package. Is it possible that there is a feeling on the part of the elected representatives that the small retail tobacconist is doomed anyway, and that in any event, it does not matter, since he is of no importance to the community? Obviously, this cannot be the case, since small business is still the backbone of the country and constitutes the livelihood of the majority against that of the minority.

"The small tobacconist store is often a family enterprise, but even when help is employed, you will find the owner at work. He opens the store early to serve the worker in plants and factories. He is open late at night, again to serve the public. Large food chains and others, who have made cigarettes a Loss Leader, open late and close early. But if a man can save 3¢ or 4¢ daily on his package of cigarettes by letting his wife buy them with the groceries he will do so, and the

tobacconist is therefore forced to meet this competition, ruinous though it be. Most tobacconists are a credit to their community. So why tempt them to engage in pin-ball games or clandestine deals to avert bankruptcy.

"Coming now to the question of Loss Leaders, the report of the Restrictive Trade Practices Commission is lacking in one respect."

I might say here, in several respects, but we will take one as an example.

THE CHAIRMAN: One at a time.

MR. GORFINKEL: "While it gives many examples of druggists using vitamins or tooth paste, grocers using sugar or flour and appliance dealers using stoves as Loss Leaders, it never stresses the most vicious loss leader practice, which is that of picking an item, unrelated to the real business of the store, and by using this item as a loss leader, cause ruinous competition to the retailer who depends on this item for his bread and butter. That is the real problem which the tobacconist faces, when cigarettes are used as loss leaders by grocers, druggists, lunch rooms, barber shops, taverns and others. No other trade faces such competition by a comparative number of stores.

"What has made cigarettes the outstanding target for price cutting? It has been brought about, here and in the United States, by food, drug and department stores who realized that a package of cigarettes would bring a customer in to the store almost daily. Tooth paste, sugar or stoves do not give this advantage to the price cutter. Furthermore, many trades have become anxious to maintain reasonable profits on their own 'bread and butter' lines, but the cigarette is to most stores an incidental and an item which they will sell at a loss to increase their customer count. Some large food chains showed sales of cigarettes to be 3% or less of their total sales, when prices were maintained. They can well afford to handle this business at a loss, if of benefit to the remaining 97% of their business. were they, however, to sell this remaining 97% of their business at the same price level as they do cigarettes, they would obviously go bankrupt in a very short time.

"The real tobacconist shop or cigar store is fast disappearing in the United States. Price cutting on cigarettes by drug stores and department stores was the main cause of the bankruptcy of two of the largest cigar chains in the United States.

Afterwards, one of these chains concentrated its remaining assets in a drug chain to have the same advantages from the cut prices as the stores that started it. In 1929, one cigar chain had about 400 stores in Greater New York alone. Today, they have less than a dozen. The situation is the same all over the United States. Those that remain were forced to add extraneous lines, thereby adding competition to neighbouring merchants. There is no other retail trade which suffers, as does the tobacco trade, by the use of its principal line as a loss leader by so great a variety of other retail trades, and only definite action on Dominion, Provincial or Municipal levels can save the tobacconist. The simplest solution of the problem is, of course, to allow Price Maintenance on tobacco products. If deemed necessary, this could be done under the supervision of a Dominion Tobacco Board. When one takes into account the position of the cigarette as a revenue-producer for the Dominion, namely, 66-2/3% of the manufacturer's selling price, as well also as a revenue-producer for some provinces and some cities at the retail level, surely an exception to the general rule might well be made.

"No one need actually fear that undue advantage would be taken by manufacturers

to fix excessive prices on their products. The fact is that the manufacturers deplore the high retail prices on their products due to the high rate of taxation at various levels, and it must be noted that the manufacturers, in February 1953, voluntarily reduced the prices to the trade by more than the reduction in excise duty, and this reduction was passed on by the jobber and retailer to the consumer. I might say at this point the jobber and the small retailer suffered in profit by this reduction, in comparison to his 1939 margin of profit. At this point I might add that the Budget reduction in 1953 called for reduction in excise of 4¢ per package from 39¢ to 35¢. But the Tobacco Trade went still further and reduced same to 33¢ per package, giving the Public cheaper prices by 6% and hoping that increased volume of sales and decreased smoking of smugs would recoup their loss of profit.

"This is somewhat of a different interpretation for the reason in reduction of smug seizures then as stated by the Minister of National Revenue on Friday, June 4th, in the House of Commons in answer to a query.

"But if actions on the Dominion level is deemed inadvisable, some similar

action might be taken on the Provincial or Municipal levels. In most cities, a special tobacconist license is required to sell tobacco products. In some countries in Europe these licenses are a form of protection to the trade, as they are not issued indiscriminately, but here anyone with the price of a license may get one. Let the Provinces or Cities establish a Tobacco Board with the power to grant these licenses on the condition that a minimum mark-up of 22%--22½% over the domestic manufacturers' lowest unit list price be maintained. This mark-up equals 18.30% on selling price. Any special Provincial or City taxes should, of course, be added to the price as arrived at above.

"This mark-up cannot be considered excessive. Even chain food stores, known for their low overhead expenses due to large sales volume, give their overhead expenses as ranging from 12½% to 15% of sales volume.

"The suggested Dominion Board would in no way prevent competition between tobacco manufacturers and retail outlets, and therefore could not be construed as price fixing.

"This mark-up would result in price

levels suggested by the manufacturers, who after years of experience with the problem have found that a certain margin of profit is necessary to keep the tobacconist in business. It would not interfere with the established practice of an intermediate price to large retailers, who can buy direct from the manufacturers, and the small merchant who buys from jobbers, as the mark-up is based on lowest selling price by manufacturers. It would, in some respects, be similar to the system in effect in France, where the Regie fixes the retail prices and the licensed retailers are required to maintain these prices.

"It would eliminate cut prices and loss leader practices, and would save the Retail Tobacconist from ruin and bankruptcy, without disadvantage to the consuming public, which would not suffer increased profit on cigarettes by comparison with the prevailing margin of profit on cigarettes. Fifteen years ago, in 1939, when price maintenance existed. The reason for this was the Wartime Prices and Trade Board who protected the buying public and in so doing reduced the small retailer's margin from 15.3% to a present-day level of 11.81% on cigarettes provided there is no loss leader selling.

"It is the contention of the Retail Tobacco Association that the chain grocery stores are using cigarettes as loss leaders in the selling of their merchandise. An analysis has been made of published financial statements of several chain grocery stores, in order to determine average gross profit earned on all commodities sold by these stores as compared with the gross profit currently earned by them on the sale of cigarettes.

"We are attaching hereto a statement, in percentage form, taken from the published financial statements of one of these chains and covering a period of six years from 1947-1952 both inclusive."

Since then, Mr. Chairman, we have added an additional year, 1953, making in whole seven years.

"This statement discloses that the gross profit earned ranged between 14.8% and 16.1% during the six year period and that overhead ranged between 11.5% and 12.2% during the same period. As compared to those percentages, cigarettes are currently sold at a price of 29¢ per package of 20 cigarettes (exclusive of Provincial Tobacco Tax), which results in a gross profit earned by the chain grocery stores

of 7.003% or less than 50% of the average gross profit earned on all other commodities sold in these stores.

"The 1941 Census of Merchandising indicates that the sale of cigarettes represents 3.2% of the total sales made by chain grocery stores, whereas the sale of cigarettes represents 67.6% of the total sales made by tobacco stores and stands. Obviously, the sale of cigarettes is a major item to retail tobacconists, whereas it is a comparatively minor item to chain grocery stores. Nevertheless, these chain grocery stores have seen fit to reduce the selling price of cigarettes to a point where the gross profit earned on their sale is insufficient to cover overhead and certainly insufficient to cover the normal net profit. It is the contention of this Association that the chain grocery stores could not sell all of their products on the same basis that they are presently selling cigarettes, namely, on a gross profit of 7.003%; obviously this would result in tremendous losses being suffered by the chain grocery stores. Despite this fact, the retail tobacconists, if they are to meet this unfair competition would have to sell an item which represents 67.6% of all its sales at a gross profit which would be very much below that required

to cover their overhead.

"It would seem quite apparent that the underlying reason behind the decision of the chain grocery stores to market cigarettes at a ridiculously low price, is to entice customers into their stores and to sell to these customers other products which earn a substantial gross profit, - in other words, the chain grocery stores are using cigarettes as loss leaders for the sale of other merchandise which is being sold at a normal gross profit.

CLOSING REMARKS

"GENTLEMEN, it would appear to me that what faces this COMMISSION is somewhat similar to that which confronted the Roman Catholic Church in 1411 when the true causes of the economic problems of the time were diagnosed by the Church, Pope Alexander III thereupon exhorted the authorities to do everything in their power to protect the small businessman, the labourer and the farmer, emphasizing the great importance to the state that these small people at all times receive aid 'prix equitable' for their wares and services.

"This view has been proved to be the correct one. We do not have to go too far back to see what happens to a state where the small businessman's

interests are not only neglected, but even ignored.

"For example, let me quote from the experience of a great economist, a former member of the League of Nations, who visited Rumania in 1938 on official business for the League. At the social and official functions to which he was invited, he saw nothing but luxury, pomp and splendour, which gave at first the appearance of a truly prosperous country. However, being of an inquisitive nature and wishing to fulfill his duties properly, he covered the interior of the country on a donkey-drawn cart, and then found that in this same country, the small businessman was financially exhausted, and the farmer was feeding his family on dried beans and potatoes. Big business flourished there: the small man was bankrupt. Where is Rumania now? Behind the Iron Curtain!

"Measures which eventually put the small businessman out of business must necessarily sow the seeds of discontent. Ordinarily, the bankrupt businessman is not qualified for anything but the business he was carrying on. He cannot be absorbed in the economy of the country, because of that fact and because, further, he is usually too advanced in age. What

business now chooses to employ for the first time a man already reached the age of 50? He cannot even receive the benefits of Unemployment Insurance, since he was a merchant and not an employee, and his final resort is the charity chest, and inwardly he seethes and burns. If we take into account the great number of small businessmen this country actually has we can realize what a great demand would be put upon the charity chests, were they put out of business, and the numbers of discontented people we would have.

"GENTLEMEN, it is respectfully suggested by this Association that the matter is urgent. We submit that this COMMISSION, pending final decision, should forthwith recommend that temporary measures be adopted on behalf of these tobacco merchants. Failure to do so entails serious consequences, and our Association feels that this Commission will have to assume full responsibility.

"Let the small businessman be protected forthwith. Let steps be taken at once to insure a 'prix equitable' for his wares, and let there be final decision to protect the small man in every way, - the small man that constitutes the majority of this country and its backbone.

"Upon these precepts rest the true principles of democracy, upon which this country is built.

"GENTLEMEN, in closing our Association wishes to extend to you sincere thanks for the kind and attentive hearing you have given this brief, and further for the courtesy and attention you extended to our Honorary President when last in OTTAWA.

"RESPECTFULLY SUBMITTED.

"RETAIL TOBACCO ASSOCIATION
"of the PROVINCE OF QUEBEC."

Seeing our opening brief is now completed, we will continue with actual figures which have been requested by this Commission and the effect they are having upon the small merchant, if same meets with your approval. Before presenting the figures I believe a few explanatory remarks would be in order at this time.

Cut-rate should not be confused with loss-leaders.

Cut-rate is used in the majority of cases to dispose of surplus stock and discontinued lines and gives a genuine profit to the merchant whereas cut-price loss-leaders are used to entice customers, without regard to profit or overhead, in an effort to sell them cut-rate articles and other items on which a full profit is made.

The next part of this is more or less

confidential from the sources we received it, because when we tried to get the information we were given a very polite no, saying it was not ethical, so we used the McCarthy Stevens method in securing these figures, which we believe is ethical due to the emergency which confronts the small retailer.

THE CHAIRMAN: McCarthy and Stevens both used the same method; is that what you mean?

MR. GORFINKEL: Well, telephone tapping and cutting pictures, and so on. I think it is the same thing, so we had to take a leaf out of their book.

"In the Province of Quebec where loss-leader selling predominates, cigarette sales in chain food stores increased by over 400% ---"

THE CHAIRMAN: I think you want to say that this increase is in chain food stores.

MR. GORFINKEL: I meant to say that. I did say that -- "In the Province of Quebec where loss-leader selling predominates, cigarettes in chain food stores increased by over 400% in 1953 over 1952. (7% of grand total in 1953 - 1.70% in 1952)."

Across Canada in the same period sales increased in chain food stores 62%. The total increase in the consumption of cigarettes across Canada for that period was 17.6%.

THE CHAIRMAN: In one year?

MR. GORFINKEL: In one year, yes. I have

got the figures here: in 1952 the total figures for cigarettes in Canada was 17,848,324,508 cigarettes.

THE CHAIRMAN: Right down to the last digit.

MR. GORFINKEL: I got it out of the Government release. In 1953, 21,001,462,042 cigarettes, showing a 17.6 increase over 1952. Whereas the increase by the manufacturer in the release of cigarettes was 17.6, the chain stores are showing 82% across Canada and 400% in the Province of Quebec.

THE CHAIRMAN: The figures you have quoted for total consumption relate to the sales of Canadian manufactured cigarettes?

MR. GORFINKEL: That is right, Canadian manufactured cigarettes, 1953 over 1952. That was in 1953 over 1952, a 17.6 increase, and I might insert at this particular time, gentlemen, that for the first quarter of 1954 Government figures show a 15% increase over 1953.

"From this you will gather that the small merchants' cigarette sales are decreasing and a tremendous increase in cigarettes sales is being made by the chain stores, as our figures show.

"The majority of small retailers are not solvent. The wholesalers in the Province of Quebec are carrying him on their books to the extent of millions of dollars and if pressed for payment,

heaven knows, what the outcome would be."

I use the term 'heaven knows', because when you get a retailer buying from jobber A on Monday and gets a week's supply, the following Monday when the jobber comes round he is supposed to pay him for the previous week's merchandise, but not having the money, he kites and gets jobber B and buys from him, and when he sells his goods he pays jobber A, and then he takes another order from jobber A, and the following week he pays it back to jobber B; and finally he has jobber C too. That is the only way he is meeting his requirements of merchandise for the store, because he definitely has not got anything in his pocket with which to go ahead and pay for the goods he had.

I am talking approximately, gentlemen, now of about 60% of the small corner merchants, because 85% of the cigarettes are sold through jobbers in the Dominion of Canada according to last year's figures, but I think that has changed now by the previous figures which I gave you.

Gentlemen, we will now turn to page 1 and see what is actually happening in dollars and cents in different outlets, as requested by the Commission in Ottawa. They asked me to have figures to substantiate the facts. Page 1 shows the retailer (and we need not mention their names, but they are available to the Commission if they wish them) and we did not use the method as employed by the Combines Division of getting this in

the form of charts, but we took the method which is fool-proof; we took the amounts purchased from the ledger for 1952, and we took them for 1953. It absolutely cannot be wrong.

THE CHAIRMAN: Just to be sure for the record, when you say "page 1" do you mean the first page of the statistics following the end of the brief which you read?

MR. FAVREAU: You mean the first numbered account C, number 1 is marked on the page.

MR. GORFINKEL: what is your first page?

THE CHAIRMAN: Following the brief which you read there appear two pages that are not numbered: one is headed "Information taken from published financial statements of one of the leading grocery chain stores", and the next is headed "Confidential report, from the leading chain store". Then comes the page "Known as 'C' Account".

MR. GORFINKEL: Would you mind turning those pages to the end of the brief. The two pages which are not numbered follow the ones that are numbered.

THE CHAIRMAN: You are now referring to page 1 which is headed "Known as 'C' Account".

MR. GORFINKEL: Page "Known as 'C' Account": buys cigarettes from the manufacturer at the 28¢ level exclusive of tobacco tax. In 1952 he showed a decrease in purchase. Mr. Chairman, we do not have to go all through these figures, because you have got a copy.

THE CHAIRMAN: You make whatever comments you have to make.

MR. GORFINKEL: He showed a decrease of 21 3/4% in his purchases.

THE CHAIRMAN: Did you tell us what you mean by a "C" account?

MR. GORFINKEL: A "C" account is a retailer who purchases from the manufacturer at the level of 28¢ per package of cigarettes.

THE CHAIRMAN: At the present time that is the price which he pays?

MR. GORFINKEL: Yes.

THE CHAIRMAN: Does he buy direct from the manufacturer?

MR. GORFINKEL: Yes.

THE CHAIRMAN: And not through a jobber?

MR. GORFINKEL: Not through a jobber. That is one account where we showed 21 3/4% decrease, and he has cut-pricing around him. He has maintained the same level, and he has not gone into the cut-price end of the business. He is still selling his cigarettes at 33¢ plus Provincial taxes.

The second one is also a "C" account who buys from the manufacturer.

THE CHAIRMAN: That is page 2?

MR. GORFINKEL: Page 2; that is also a "C" account who buys from the manufacturer, and for a six-month period he showed a decrease in purchases of 29%.

MR. FAVREAU: When you speak of a six-month period, is it the first six months of the year?

MR. GORFINKEL: No, it is the last six months of the year. In other words, I took six months to get an average levelling up and down which shows over that period, month by month, and you can see how it goes. Whereas, gentlemen, in the Restrictive Trade Practices Volume issue ---

MR. FAVREAU: While you are on that subject, that has not been prepared by this present Commission?

MR. GORFINKEL: No, I am calling that to your attention because you will look into this book for information as to their findings and compare them with ours. It is a directed statement of the Department of Justice.

THE CHAIRMAN: What Mr. Favreau wanted to point out is that while you have referred to that as the report of the Restrictive Trade Practices Commission, it is not a report of this Commission. It is simply a statement of facts and information which has been obtained by the Director of Investigation and Research, who, on completion of the book, turned it over to us for the purposes of this inquiry. There will be no report from the Commission until we have completed the inquiry.

MR. GORFINKEL: I appreciate that.

THE CHAIRMAN: I just wanted to make that point clear.

MR. GORFINKEL: what I wanted to bring out was that whereas in this particular volume the Commissioner got the figures as they saw fit to give them, what his investigators found out, in our figures there is no question of doubt. We maintain this book is a marvellous volume, well printed in every way, especially in form, but lacking a lot of information, and inaccurate in many forms. Our figures cannot be denied, because it was open to Government investigators to go to the manufacturer or to the retailer who will show him his books; and our percentages are accurate.

I just completed page 1 and page 2, and I will now turn to page 3, "Known as 'B' Account". A "B" account is a retailer who purchases from the manufacturer at a level slightly under 27¢ a package, namely, 26.96 per package, he pays to the manufacturer.

MR. FAVREAU: Is that irrespective of the quantity he buys?

MR. GORFINKEL: Irrespective of what quantity. He has no stipulated quantity outside of case lots, and so on. In other words, there are two types of buyers from the manufacturer; one who buys at the level of 13.48 per 1,000 and one who buys at a price known as \$14.00 a 1,000. The one I have reference to now buys at 13.48 per 1,000, namely, 26.96 a package because there are 20 cigarettes in a package.

THE CHAIRMAN: You mean there are two

different prices at which retailers buy direct from the manufacturer?

MR. GORFINKEL: Yes, I will explain the reason why: The "B" retailer is classed as a jobber because he supplies, in the particular neighbourhood he is, the small storekeeper with his small requirements.

THE CHAIRMAN: He is both a retailer and a jobber?

MR. GORFINKEL: Yes. If he wants to give up his retail business he will continue as a jobber. If he wants to run as a jobber and also run a retail establishment, or establishments, he can do it.

MR. FAVREAU: He would not have to remain a "B" account without actually doing some jobbing?

MR. GORFINKEL: Without actually doing some jobbing. The reason I brought out the "B" account is that that is the category actually which the chain food stores are in, the ones who supply their own stores only. We have chain food stores, which this volume shows, such as in Vancouver known as MacDonald Consolidated who in Vancouver sell their own stores only, but in Victoria, besides selling their own stores, they sell other retailers. So, in Vancouver I would say MacDonald Consolidated is an "A" account, which is strictly wholesale, and in Victoria he carries on --- Let me repeat that. In Vancouver he is what you call a "B" account; he only supplies his

own stores, whereas in the case of Victoria he sells his own stores and other stores.

THE CHAIRMAN: That is MacDonald?

MR. GORFINKEL: MacDonald Consolidated.

THE CHAIRMAN: But the "B" account I thought was one who sold at retail to his own stores and also supplies small dealers -- both a jobber and a retailer?

MR. GORFINKEL: That is right.

THE CHAIRMAN: But if he sells only to his own stores he is not a jobber at all.

MR. GORFINKEL: No, he comes under page 2. If he buys only for his own stores and he has no jobbing, he comes under pages 1 and 2.

THE CHAIRMAN: You are suggesting, I gather, that MacDonald's Consolidated in Vancouver does not act that way; is that it?

MR. GORFINKEL: No, they only supply their own stores; they only sell for their own stores.

THE CHAIRMAN: Then, are they a "B" account?

MR. GORFINKEL: They are an "A" and a "B" account, and why I brought that out was, once they go from Vancouver to Victoria they not only sell the merchandise through their own stores, the same as the "B" account, but they sell it to other accounts. A "B" account sells in his own stores . . .

THE CHAIRMAN: And to others?

MR. GORFINKEL: . . . and to others. That is what MacDonald Consolidated does with a chain store

in Victoria.

THE CHAIRMAN: And in Vancouver, what do they do?

MR. GORFINKEL: They sell only to their own stores; they are an "A" account. There is an "A" account which is a jobber; a "B" account which is a jobber and retailer; and a "C" account which is only a retailer. They all buy from manufacturers at two levels. The "A" and "B" level is identical as far as cost is concerned, and a "C" level is approximately 1¢ more a package.

MR. FAVREAU: So they could buy as wholesalers but exclusively for the purpose of selling their own outlets and "A" account?

MR. GORFINKEL: That is right.

THE CHAIRMAN: Where would you put a chain store, under the method which they buy?

MR. GORFINKEL: Today I would call them a qualified "A" account with "B" privileges.

THE CHAIRMAN: Maybe you can explain what you mean by that?

MR. GORFINKEL: A qualified "A" account is one who has jobber's privileges, or a wholesaler's privileges, and instead of using them as a wholesaler he uses them for retail purposes, because I do not know, and I do not think anybody else seems to have the definition of what should be a wholesaler and what should not be a wholesaler. Certainly because a man has 20 stores his buying power does not give him the

privilege of being a wholesaler -- at least, it does not under the N.R.A. Act in the United States. We might have to go ahead and think of these things in the future. In other words, a wholesaler is a wholesaler and a retailer is a retailer. There is nothing to stop a wholesaler from having his own stores, but why doesn't he sell, if he is a wholesaler, under the same conditions as the other stores? He only sells to his own stores; so is he a wholesaler or is he not? If he is not, or if he is -- I am not going to pass my judgment on it.

MR. FAVREAU: So he is a retailer buying direct through an indirect method?

MR. GORFINKEL: No, not through an indirect method. He is a retailer buying direct with wholesale privileges.

THE CHAIRMAN: You mean he is paying exactly the same price as a pure wholesaler?

MR. GORFINKEL: That is right.

THE CHAIRMAN: But he is distributing himself, and not other retailers, and only to his own stores as retail sources?

MR. GORFINKEL: Right, with the exception of the one I read about -- MacDonald Consolidated. When they went to Victoria to supply their own stores I believe the idea was to cut down their overhead and start selling to other stores to cover the overhead and their warehouse charges.

THE CHAIRMAN: What is the price that a straight wholesaler obtains a cigarette for from

a manufacturer?

MR. GORFINKEL: 13.40.

THE CHAIRMAN: How does that work out on a package.

MR. GORFINKEL: 26.96 per package.

THE CHAIRMAN: So the "B" accounts are the same as the wholesale accounts?

MR. GORFINKEL: Yes.

THE CHAIRMAN: Exactly the same?

MR. GORFINKEL: That is right.

THE CHAIRMAN: Are there individual retailers who buy exactly on the wholesale price?

MR. GORFINKEL: Yes, which is covered -- either individual retailers who buy from the manufacturer or at the wholesaler price -- is that the question?

THE CHAIRMAN: Whether an individual retailer can buy on the straight wholesale price, or do they buy on a price that is a little higher than the straight wholesale price?

MR. GORFINKEL: They buy from the "C" account under the same conditions as they buy from a jobber, which is 7% higher than the manufacturer's price to the "B" account.

THE CHAIRMAN: They buy from the "B" account?

MR. GORFINKEL: Yes, the same as they would off any normal wholesaler. In other words, a "B" account is, besides being a retailer, a wholesaler; let us put it that way.

THE CHAIRMAN: Yes, but what is the exact

nature of this "B" account? It is not simply a retailer?

MR. GORFINKEL: No.

THE CHAIRMAN: There are no people operating a purely retail business who buy on the basis of the "B" account?

MR. GORFINKEL: No, they have got to operate both.

THE CHAIRMAN: There are retailers, however, who operate purely as retailers who buy direct from the manufacturer and pay a higher price?

MR. GORFINKEL: 1¢ and a fraction higher, which is the 28¢ price, namely, \$14.00 a 1,000.

THE CHAIRMAN: That is what I wanted to get clear, that there are no retailers who are simply retailers who buy at straight wholesale level, but there are some retailers who purchase from the manufacturer at a price somewhat higher than the wholesale price charged by the manufacturer, but lower than if he buys from a jobber?

MR. GORFINKEL: Correct. This particular storekeeper, whether "B" or "C" account -- we will disregard that for a moment ---

THE CHAIRMAN: This is page 3?

MR. GORFINKEL: Page 3, and strictly on his retail end of the business he showed a decrease in purchases to the extent of 24.3% in 1953 over 1952

THE CHAIRMAN: That is the cigarettes which he purchased for resale to other dealers,

not those he purchased for sale direct to the consumer?

MR. GORFINKEL: This particular "B" account in this particular branch -- he has several branches -- showed a decrease in his purchases on the retail volume he did to the extent of 24.37%.

we come to another account; a retail output, in the same classification.

THE CHAIRMAN: Page 4?

MR. GORFINKEL: Page 4.

MR. FAVREAU: When you say a decrease in purchases from 1952 to 1953, that is comparing the last six months of the two years?

MR. GORFINKEL: Between 1952 and 1953 it showed a 24.37% decrease.

Page 4: Another retailer, instead of giving you the figures of purchases we are going to give you actual retail figures that took place in the particular store for a twelve-month period. This particular location is a building stand. The decrease in 1953 in comparison to 1952 on retail sales was 16.2%. The decrease for the four-month period, based on their year which commences in February, to the month of May for 1954 in comparison with 1953 was a continuous decrease of 14.3%. The decrease in a four-month period of 1954, the same period in comparison to 1952, on which we base our 1953 figures, showed a decrease of 27 2/3%. It is just dropping, dropping, dropping. They have not met cut-price competition.

MR. FAVREAU: Is that strictly on sales of cigarettes?

MR. GORFINKEL: Strictly on sales of cigarettes, yes; cigarettes only.

MR. WHITELEY: Was there any change in prices of the cigarettes in this period?

MR. GORFINKEL: Yes, but that is offset. because the change in prices reduced the price of cigarettes by 16%, but the consumption has gone up 17.6, so the figures hold ground.

THE CHAIRMAN: It should be nearly even.

MR. GORFINKEL: It should be practically on even keel.

THE CHAIRMAN: If you got the same increase of sales of cigarettes as was average across the country, the total monthly returns would be about the same.

MR. GORFINKEL: Yes, so we did not touch on that. I thought that question might come up, and I was prepared. The cost per package of cigarettes was higher in 1953, but the increase that has taken place in 1953 was higher by 1%; however it is a levelling off.

MR. WHITELEY: Yes, so far as the individual purchasing is concerned, but you are comparing the sales of one year with another.

MR. GORFINKEL: If he got his proportion of the increase it would not change his sales figures at all.

MR. WHITELEY: There might have been more

stores.

MR. GORFINKEL: Yes, there is no question about that here, but we are not discussing that. We are discussing the decrease that has taken place.

MR. WHITELEY: But if there had been more stores to share the money, the sales might have gone down as well.

MR. GORFINKEL: Possibly, yes; there is a possibility there, but these are actually figures of dollars and cents if things were normal. I mentioned before, if there are more stores now can you account for the fact that the chain food stores -- I was going to come to it in a statement later; I am prepared for that -- in fact, I am prepared for everything because this is our final stand today, and I hope to get results -- how can you account for the fact that the chain food stores show an increase of anywhere from 10% to 17% even if there are more stores. And if the sales are increasing by 7% of the total consumption, don't you think the average retailer would get the same proportion of the increase if he is selling cigarettes?

MR. WHITELEY: He would get the same proportion with the same stores.

MR. GORFINKEL: Yes, everything being static he should get the same. The chain store is showing an increase of 16% -- 400% increase on some sales. So, I don't think there is any

discussion on that point. I might be wrong.

MR. FAVREAU: But the chain stores might have absorbed a great proportion of the increase during the year.

MR. GORFINKEL: You are right, yes. That proves itself right here when we show that we dropped 27 $\frac{2}{3}$ % in two years. I would like to know what happens to that 27% of our sales; and what happened to the previous customer's sales namely, 21 $\frac{3}{4}$ %, 29.56% and 24.37%? There is too much of a coincidence that the sales of those who have been maintaining the price level should be going down, and when there is cut-pricing around the corner. We have taken them from different parts of the city, so our figures are pretty well substantiated. If the normal increase prevailed and people are buying the same amount of cigarettes, and the average consumption increased, some retailer would go ahead and show a normal increase of 17% in sales, which would more than offset the increase in price.

THE CHAIRMAN: The last one would seem to indicate that the reduction over that two years is about 27%.

MR. GORFINKEL: That is correct.

THE CHAIRMAN: And even if you make an allowance for the reduction in the price of cigarettes of about 16%, your contention would be that the reduction in dollar returns is considerably more than would be represented by the reduction

in price per package if they had maintained the same volume of cigarettes sold?

MR. GORFINKEL: Correct.

THE CHAIRMAN: Even without an increase in the number of cigarettes sold, the returns would have been substantially higher if they had maintained the same level of sale in terms of dollars; there would actually have been a reduction in the value of sales in dollar return.

MR. GORFINKEL: Yes, but if they also had the same normal increase which took place generally across Canada in production of cigarettes it would have more than offset any decrease in price which took place in 1953. Whether it is more stores or less stores, I will leave that in abeyance.

MR. FAVREAU: Do you have figures as to the number of retail outlets in the Province of Quebec in 1951, 1952 and 1953, and the present number?

MR. GORFINKEL: Approximately only. About 27,000, or thereabouts, in the whole Province.

MR. WHITELEY: Are there any figures compiled as to the number of tobacco licences issued?

MR. GORFINKEL: Well, in different parts of the Province they have tobacco licences -- different municipalities -- and in certain parts they have, and in certain parts they have not. The same licences issued to the Island of Montreal

are issued to anybody that sells confectionery;
it is a \$10.00 restaurant licence.

THE CHAIRMAN: You mean a \$10.00 restaurant
licence covers tobacco?

MR. GORFINKEL: Yes, and if you are selling
only candy and chocolate bars you still get the
same \$10.00 licence.

THE CHAIRMAN: There is no special licence?

MR. GORFINKEL: No, you can sell candy
without tobacco, but if you want to sell tobacco
you still have to have the same licence.

THE CHAIRMAN: You have to have a candy
licence?

MR. GORFINKEL: Yes.

MR. FAVREAU: Just for the record, to be
an "A" account, and to be allowed to sell exclus-
ively through its own retail outlets, need a re-
tailer be specially incorporated distinctly from
its own retail outlets?

MR. GORFINKEL: I don't believe any of
them are separated from their original parent
company. It is just a clarifying term. I did
not touch that point because I have reason to
believe that the jobbers have something to say
on that point, so I let it go. I don't want
to touch on it too much. I put it this way:
Previous to January 1953 all the chain grocery
stores bought cigarettes on the same level as
shown on pages 1 and 2, which is a "C" account.
They were classified as retailers buying direct

from the manufacturer at the \$14.00 level. They were not classified as wholesalers. I am trying to avoid answering this, but you asked me; I think the jobbers are going to cover that. I am trying to keep more or less to what the retailers' problems are without touching the wholesale end of it. For some unknown reason the manufacturers -- and I am qualified to speak on this -- put the chain food stores on the same basis as the wholesaler; for what reason nobody seems to know. The only thing it has developed into is to give them a dangerous weapon with which to turn round and exterminate the small retailer. By giving them additional profit which belongs to a wholesaler, and a wholesaler only.

MR. FAVREAU: They are getting a discount which is not available to other retailers as such?

MR. GORFINKEL: As such, but bear in mind retailers do not come into the wholesaler category. The chain stores before were the same category as the legitimate retailer, whether the retailer had one store or one hundred stores.

THE CHAIRMAN: You mean a retailer who buys direct?

MR. GORFINKEL: Yes.

THE CHAIRMAN: Most retailers do not buy direct from manufacturers.

MR. GORFINKEL: That is correct.

THE CHAIRMAN: Some retailers for one reason or another have been allowed to purchase

direct from the manufacturer at a special rate?

MR. GORFINKEL: That is right.

THE CHAIRMAN: And you are saying now that the chain stores up to 1953 were placed on the basis of a retailer buying direct from the manufacturer, but that at that time they were put on the basis of the wholesaler buying direct from the manufacturer?

MR. GORFINKEL: Correct. What the reason was I cannot say, except outside of giving them a dangerous weapon which is working to the detriment of the small retailer today.

We turn now to page 4a; 4a is another branch of store number 4.

THE CHAIRMAN: That is the second page described as "4", and you want it now as 4a.

MR. GORFINKEL: No; the second page is page 4, and the following page is 4a.

MR. FAVREAU: There are two pages which are numbered "4".

MR. GORFINKEL: Well, the second one. One is called "Stand"; the second one is called "Store".

MR. FAVREAU: Yes, and that will be page 4a?

MR. GORFINKEL: 4a. Gentlemen, insofar as this particular store is concerned, it was like the Charge of the Light Brigade -- to the left of them, to the front of them, behind them, and this store is standing up there as a massive

giant -- I hope they are, because I happen to head that company.

THE CHAIRMAN: You mean it is surrounded by chain stores?

MR. GORFINKEL: Every chain store that operates in the Province of Quebec has a branch within a block. We have got Steinbergs, A. & P., I.G.A.; we have got Steinbergs on this side, and one A. & P., and Thrift and Dominion, and another Dominion here, and another there -- all around -- and a few drug stores.

THE CHAIRMAN: Are any of the others cutting prices besides the chain stores?

MR. GORFINKEL: They follow; a lot of the small merchants followed to hold the customers. The small retailers followed in the latter half of 1953, so we have figures prepared for 1952, 1953 and the first five months of 1954. In 1952 to 1953 the store showed approximately an 18% decrease. For the four months of 1953 to 1954, that is up to the end of May, because the year for this particular store starts in February, showed a 24% decrease. That is when everybody joined in the grand parade. The decrease in retail sales for the four months of 1954 in comparison with 1952, which gives you the overall decrease, is fully 39.1%. That is the effect it had on this particular branch. In this particular store we have other figures. We are trying to get as many as we can because we know the figures we have

been working on in the past two weeks are really accurate figures. We are ready to say under oath that they are anywhere from 95 to 98% perfect, which is more than can be vouched for in this volume, because the answers the Director got were the answers the retailer saw fit to give. Anything that would be to his disadvantage he just ignored, and gave the Commissioner whatever he wanted to go ahead and know, but our figures are accurate. They are taken from purchase ledgers, and your Commission can have your investigators examine them any time. The figures in this particular store, which are absolutely brutal, are 39.1% from 1952 to 1954.

Now, this store gives additional figures because the cash register in this store indicates the customer account in every transaction.

MR. FAVREAU: That is, the number of sales made?

MR. GORFINKEL: No, the number of customers, because if a man buys a package of cigarettes, and he buys a pipe and chocolate bar, it is classed as one customer.

THE CHAIRMAN: One visit to the store?

MR. GORFINKEL: Yes, regardless of whether he buys ten commodities. In 1953, in comparison with 1952, they had a decrease in customers of 22,461 at an average of 82¢ each; that is what those customers would have spent, taking the average we had, if we had not lost them. Taking

that, it would give us our \$13,000.00 decrease which was involved in the 17.9%.

In 1953 to 1954, in the same period it still continues to be a decrease by approximately 9,000 customers. In other words, in 1953 to 1954 the figures you will note for the four months, the decrease is still continuing over the 1953 to 1952 figures by the amount of approximately 9,000 customers -- 8,889 to be exact -- at an average of 80¢ a customer. The decrease in customers in 1954 over 1952 for a period of four months shows 19,605 customers. In other words, gentlemen, this store is running at the rate of 60,000 customers lost per year in comparison to 17 months ago; and 60,000 customers at 80-odd cents is \$50,000.00 a year. That is what this store is dropping due to cut-pricing. We have these figures accurate; they might sound massive, but we have given you these figures so you can appreciate now badly off the small merchant is who is not as efficient as we are in trying to sell other merchandise. I might say a truer picture of these figures is in the hands of Mr. MacDonald, which shows the other departments of the store. That figure was given him a few weeks ago.

MR. FAVREAU: Is it possible to know what these sales would mean in terms of actual units of cigarettes sold?

MR. GORFINKEL: If a man comes in and buys a package of cigarettes, he not only buys

a package of cigarettes, he buys a chocolate bar or a pound of candy, or a package of razor blades.

MR. FAVREAU: No, I am not asking that. I am just speaking of your figures relating exactly to cigarettes.

MR. GORFINKEL: Very easy; taking 1952 over 1953, the decrease is \$18,000.00, and if you take 22,000 customers, the same percentage at 37¢ would be 22,461 packages of cigarettes -- which did not come into that store. It would not be other transactions, gentlemen; it would be definitely cigarettes.

MR. FAVREAU: I am thinking in these terms, that if the price of cigarettes has gone down, it may be that there is not such a great difference.

MR. GORFINKEL: If you look at figures which don't add up in my opinion, the increase in the consumption of cigarettes more than offsets any decrease in price. There is a levelling off point there, so we are not accomplishing anything, outside of the Commissioner's remarks that there might be more stores. However, I don't think this holds weight, for the simple reason the chain food stores have increased anything from 35% in that time. Say there are more stores and sales in the food business; where is it in the tobacco business? 60,000 customers a year lost; that is extremely bad.

THE CHAIRMAN: Have you finished with that

part now?

MR. GORFINKEL: Yes.

THE CHAIRMAN: well, I think we will take a recess.

---A short recess.

THE CHAIRMAN: Proceed, Mr. Gorfinkel.

MR. GORFINKEL: In our preceding pages we covered two classes of retailer known as "C" and "B" accounts, one of which is at 28¢, and one at 26.96.

Now we come to the small man purchasing from a jobber.

THE CHAIRMAN: You don't call him by a letter?

MR. GORFINKEL: No, he has no degrees. This is for a twelve-month period, and is a store located in downtown Montreal. His decrease in purchases from 1952 to 1953 was 15.13%. His decrease for four months from 1953 to 1954 was 15.69%. His decrease in purchases in 1954 in comparison to 1952 is 34.55%. That is a small man who buys from the jobber.

MR. FAVREAU: Is this still cigarettes?

MR. GORFINKEL: Particularly cigarettes.

MR. FAVREAU: Is that including bulk tobacco, or pipe tobacco?

MR. GORFINKEL: Cigarettes only; all our retail is based on cigarettes.

THE CHAIRMAN: This particular instance on

page 5, does this retailer handle other things besides tobacco products?

MR. GORFINKEL: He is a restaurateur; this is his tobacco department.

THE CHAIRMAN: I was thinking his sales of cigarettes would not be high, anyway.

MR. GORFINKEL: Those are taken from actual ledger sheets -- what he buys every month. In this particular case this restaurant has shown an increase in its restaurant business, but not in cigarettes. A block further away there is another retailer, and it shows you how the figures are so much in line when you think it is a coincidence, getting figures that way, which only goes to show how accurate our figures are.

THE CHAIRMAN: This is page 6?

MR. GORFINKEL: Yes, page 6. The 1953 purchases in comparison to 1952 showed a 15.24% decrease. The same four months in 1954 in comparison with 1953 showed a continued decrease of 16.64%, and the four-month period in comparison with 1952 to 1954 shows a decrease of 32.31%, which is pretty close to the figure of 34.55 on the preceding page.

There is nother small man's account "Known as Page No. 7" and I asked Mr. Davidson, the Secretary, to give you all copies.

THE CHAIRMAN: You mean in addition to the blue-backed brief there are two pages?

MR. GORFINKEL: Yes, page 7 I am coming to

now. It is the same category of a small retailer buying from a jobber.

THE CHAIRMAN: Page 7 is an additional page which you filed with us this morning in addition to the brief which we received earlier?

MR. GORFINKEL: That is right. This little retailer, located in the City of Verdun, shows a decrease in 1953 over 1952 of 15.80%. His decrease in purchases from 1953 to 1954 for a five-month period continues to show a decrease of 29.88%. His decrease in purchases from 1954 to 1952 shows a decrease of 40.96%. He is also feeling the full effect of people in front of him and behind him, similar to the store we quoted previously at 39%.

THE CHAIRMAN: These figures on page 7 are for a five-month period?

MR. GORFINKEL: That is right.

MR. FAVREAU: Did you say what kind of store that was?

MR. GORFINKEL: A regular small corner merchant who sells cigarettes, tobacco, cigars, chocolate bars, soft drinks, newspapers and magazines.

THE CHAIRMAN: Not general groceries?

MR. GORFINKEL: Not groceries. I have not touched any part of the grocery business in any one of my briefs. They are either restaurants with tobacco counters or small merchants who are exclusively tobacco.

THE CHAIRMAN: Yes, but the instances you have given include people who have other business at the same location? One runs a restaurant?

MR. GORFINKEL: That is right.

THE CHAIRMAN: And one a small general store?

MR. GORFINKEL: Yes, there are two drug stores who have a tobacco department, and two restaurants. All the rest are strictly tobacco merchants.

THE CHAIRMAN: Who handle nothing but cigarettes and tobacco products?

MR. GORFINKEL: That is right -- pipes, and so on. In other words, we have covered every branch of tobacco.

MR. FAVREAU: Take, for instance, the last one; you say that his tobacco in his business accounts for 67.6% of the sales?

MR. GORFINKEL: I would go ahead and say maybe about 50, 55 or 60%. The average across Canada is 47, and I took it from the Government figures.

Following that is a letter from Vancouver received on June 5th, 1954, of which a copy was given to you. We tried to get figures from points where cut-prices were most deplorable.

THE CHAIRMAN: This is a letter to you?

MR. GORFINKEL: Just received on Saturday from a query I sent out.

THE CHAIRMAN: A letter addressed to you?

MR. GORFINKEL: Yes.

THE CHAIRMAN: From Vancouver?

MR. GORFINKEL: From Vancouver. It shows levelling off points, outstanding cut-pricing and what happens in the final outcome and now it affects the trade, and they are also actual figures. I don't think it is necessary to read them; we can consider them as read because they are in the file.

THE CHAIRMAN: well, unless you wish to make some comments.

MR. GORFINKEL: No, it just substantiates, in Vancouver, exactly what is happening in the Province of Quebec generally. The only thing is, it does not cover stores which have maintained prices. It covers stores which have been doing cutting continuously, and what happens to their cutting. It picks up more and more people who follow the same procedure. There is a levelling off point, and a substantial loss is incurred by all concerned.

THE CHAIRMAN: Before you proceed further, perhaps you would tell us which of these accounts is wholly tobacco business?

MR. GORFINKEL: The first one is a drug store --- you mean in Vancouver?

THE CHAIRMAN: No, we are going back to the others: You have shown some as "C" and some as "B".

MR. GORFINKEL: No. 1 is a drug store.

THE CHAIRMAN: "C" account, that is a drug store:

MR. GORFINKEL: Yes, and No. 2 is a drug store. No. 3 is strictly a tobacco store.

THE CHAIRMAN: Tobacco products only?

MR. GORFINKEL: Yes. No. 4 and 4a are strictly tobacco shops. No. 5 is a tobacco counter right at the cashier in a restaurant.

THE CHAIRMAN: That is a restaurant?

MR. GORFINKEL: Yes, a restaurant business. No. 6 is the same as No. 5, a restaurant. No. 7 is a small corner tobacco shop.

THE CHAIRMAN: Small corner store?

MR. GORFINKEL: A small corner store.

MR. FAVREAU: A small variety store?

MR. GORFINKEL: Yes, chocolate bars, drinks, magazines and so on; the majority of the business is tobacco -- or close to it.

MR. FAVREAU: A small corner variety store, chiefly tobacco?

MR. GORFINKEL: Chiefly tobacco such as you find -- you call them neighbourhood stores.

THE CHAIRMAN: And page No. 7?

MR. GORFINKEL: I gave you page No. 7. And then, a letter from Vancouver.

MR. FAVREAU: These drug stores, do they buy through collective buying?

MR. GORFINKEL: These drug stores, they buy from manufacturers; they buy from the manufacturer on the level of \$14.00 a 1,000; 28¢ a

package.

MR. FAVREAU: Are these chain or individuals?

MR. GORFINKEL: Individual stores: One of them consists of three stores, and one has one store.

THE CHAIRMAN: They are both direct accounts?

MR. GORFINKEL: Direct accounts on a retailer basis. The reason we have not brought considerably more -- and I think we have enough -- of the small accounts is that when you go to a bank to do the figures he usually has everything on a bill, and it would take us a month to go round and segregate what was drinks, and candy, and so on. He shows the total sales and the total difference, and that is how we arrive at the figures. They use the old-fashioned book-keeping system. All we wanted to report on was figures we could vouch for as being practically 100% accurate.

We now turn to the last two pages of our figures. One is headed "Confidential Report", and I mentioned the reason for that before.

MR. FAVREAU: The last two pages are ---

MR. GORFINKEL: One is headed "Confidential Report".

MR. GERIN-LAJOIE: Those we had ahead of these.

MR. FAVREAU: On, yes.

MR. GORFINKEL: I asked you to turn them over in the brief for future discussion. This

is based on the purchases, got in the same manner as mentioned before -- confidentially -- and is of a leading chain store operating in the Province of Quebec. The purchases for one month and a similar month in 1953 -- 1952 to 1953 --- showed a 179% increase. That includes the high point and the levelling off point for a period of twelve months. When they were alone in the field it may have been considerably higher; this was 700%, but with competition it boiled down to 179% over a twelve-month period.

THE CHAIRMAN: That is on cash purchases?

MR. GORFINKEL: On cash purchases.

THE CHAIRMAN: Between 1952 and 1953 there was a reduction in price, was there not?

MR. GORFINKEL: That is right.

THE CHAIRMAN: So the increase in quantity of cigarettes would be more than 179%?

MR. GORFINKEL: That is right, and if 179% indicates anything, it would be considerably more in dollars too. That is more or less what you wanted to know before when you were talking about more stores. It shows you what happens when you are facing the cut-price situation; not only the man who is decreasing, but it shows you what happens when his business goes up due to cut-prices.

The retail sales, plus 22.4%, which would still show the same percentage on the increase in dollars. To give you an example,

in 1952 their sales, in dollars, were \$33,213.24 in one month. In 1953 it had risen to \$92,809.80.

MR. WHITELEY: What is this percentage?

MR. GORFINKEL: I am talking about the purchases and I am adding on 22½% which equals, actually, his cost. 22½% on his purchase equals 18.30 on his sale.

MR. WHITELEY: Where do you derive that percentage?

MR. GORFINKEL: He makes, by buying direct from the manufacturer, 18.30. The first part of the figures shows you his purchases.

MR. WHITELEY: Is he selling at the cut-price?

MR. GORFINKEL: No, the first item is purchases. To arrive at his total dollar value we add on 22.4%.

MR. WHITELEY: Is that based on the cut-price?

MR. GORFINKEL: No, that is based on the normal mark-up.

MR. WHITELEY: Was he selling at normal mark-up?

MR. GORFINKEL: No, but we will come to that.

THE CHAIRMAN: If he had sold at 33¢ a package ---

MR. GORFINKEL: 33¢ basic, which is the normal price.

THE CHAIRMAN: --- he would have had 22.4%

gross profit?

MR. GORFINKEL: It does not alter the final percentage figure, because 22.4 added on gives you the basis at a 33¢ level, and I am discussing this on that basis. Cut-price existed in this store and he showed 179% increase on the cut-price level.

THE CHAIRMAN: Is this the store which your brief referred to earlier as having a mark-up, when selling at cut-prices, of 7%?

MR. GORFINKEL: 7%, that is right. All we have to do in the end to this figure is subtract the difference percentage-wise, which will give you in a minute -- we will have those figures in a moment, sir -- but in any case it shows 179% increase, which is approximately \$50,000.00. On \$33,000.00 he shows a \$50,000.00 increase. In any case, it brings it up to a 179% increase in dollars.

THE CHAIRMAN: If in 1953 he had sold at 33¢ that would be true -- as it was in 1952.

MR. GORFINKEL: No, no; 1952/1953, the figures are accurate.

THE CHAIRMAN: Yes, but not in 1953 if you are taking the mark-up as 22.4%. Is that what you mean, that he would have been selling at 33¢ a package and if he had done that, then his total selling price would be 92,809 and he would have had an increase of 59,000.

MR. GORFINKEL: Yes, that is the figure, correct.

THE CHAIRMAN: But if he had sold at 29.30¢ a package, while the volume of cigarettes might be, say, at 179%, the return in cash to him would be less.

MR. GORFINKEL: That is it. Primarily, what we are interested in is the increase in the number of cigarettes he is selling, because the dollar volume takes care of itself. It has really no bearing, because he has taken away a 179% increase from the small retailer.

THE CHAIRMAN: Yes, but you show him first making a much bigger profit.

MR. GORFINKEL: Yes, that is correct. Leave the bottom figures out, and just take the top figures until we get them corrected, and that will show you that it still shows 179% increase in sales, because his purchases were 27,000 in 1952, and in 1953 they were 75,000. He had an increase in purchases of \$46,000.00, which is the equivalent of 179%; I am talking of purchases. We will give you the retail figure on here.

THE CHAIRMAN: If you take into account the reduction in the price of cigarettes, the increase in some periods of 1953 indicated on this increase would be substantially more than 179?

MR. GORFINKEL: Considerably more than 179, yes.

THE CHAIRMAN: It would be another 10% or so up.

MR. GORFINKEL: That is right. By the same token the price of cigarettes -- the top part would definitely be considerably higher, and in the lower part there would be a change in dollars due to his cut-price method of selling them. Based on a gross profit of 7%, that he is making today, that last figure would read, "Retail Sales, 1952, \$33,213.24; Retail Sales, 1953, \$61,534.60".

THE CHAIRMAN: That is assuming the 29¢ price throughout the year?

MR. GORFINKEL: Yes, and instead of the last figure being 59,596, it is 48,321.

MR. FAVREAU: What are the 1952 sales?

MR. GORFINKEL: The 1952 sales were \$33,213.24; and \$61,534.60 in 1953.

THE CHAIRMAN: This last figure is partly an estimate, because it may not be correct that they sold at 29¢ throughout the whole year?

MR. GORFINKEL: Pardon me, this is for a one-month period, and I took the month which is the levelling off month; I took the month of December, 1953, which is only six months ago, in comparison to the month of December, 1952.

THE CHAIRMAN: It is the month of December?

MR. GORFINKEL: Yes. Gentlemen, we now turn to the final page of the figures, and while I was in Ottawa there seemed to be a discussion going on as to what is the actual overhead of the chain food stores. I, therefore, took measures to get half a dozen or more of the

recent fourth Annual Report of one of Canada's leading chain stores who operate approximately 195 stores in Ontario, Quebec, New Brunswick, and possibly other parts of the Maritimes. I think it is four or five districts, in any case.

... turn to the centre of the book, known as page No. 10 -- there is no actual number.

MR. FAVREAU: How is it indexed?

MR. GORFINKEL: In the middle you will find page 9, and then turn over one. But there does not happen to be a number on it. We will compare it with our sheet; in other words, this book was got after the report was sent to the Commission in Ottawa at the last minute, and we added in from this book the 53 which made the 7th page. Actually, this book covers a ten-year period. We have left nothing undone to portray our difficulties in an accurate manner. We will take the lower part of that page and we will compare it with the page in our brief and we will consider the basis of our figures with this page where it was taken from. Between the year 1944 and the year 1954 the overhead ranged from 11.5 to 12.45. That is for the period of 1953. If we look under the heading "1948", which is the lowest operating they had in this chain, their overhead was 11.5. You will look at our own sheet, which is a copy of it, and it gives it to you.

THE CHAIRMAN: I am not certain what you are referring to. Is this on page 10?

MR. GORFINKEL: On page 9 of our sheet.

THE CHAIRMAN: That is page 10 of the book?

MR. GORFINKEL: Yes, that is right; that is where we got our figures from.

THE CHAIRMAN: I am trying to identify what you are referring to on their balance sheet.

MR. GORFINKEL: This comparative statement of income and expenditure.

MR. WHITELEY: These two statements are all in dollars?

MR. GORFINKEL: That is right.

MR. WHITELEY: There are no percentage figures?

MR. GORFINKEL: No, but the page I have got known as page 9 in our brief breaks it down. We have brought this statement along to substantiate our figures. You will recall the last two pages, 8 and 9, I asked you to turn them over until the end; the page following "Confidential Report".

THE CHAIRMAN: Just to get this clear for our purposes. I am going to take this book of statements from the chain store which you have filled with us, and we will mark it exhibit M-1. It includes the judgments from the other chain stores too.

MR. GORFINKEL: Yes, I didn't have any copies of that; it is taken out of this morning's paper and we attached them.

---Exhibit M-1: Book of statements.

MR. GORFINKEL: I think the Commissioner will find a lot more useful information in it as you cover the country. Looking at our page N . 9 we find that the overhead was at the lowest point in the seven-year period at 11.5% under the year 1948; and the year ending 1953 it was 12.45%.

MR. FAVREAU: What would be the highest?

MR. GORFINKEL: 12.45.

THE CHAIRMAN: 1953 was the year was the year in which they had the highest percentage on overhead:

MR. GORFINKEL: That is right. Selling cigarettes at 29¢ a package, which is the prevailing price in the chain, against a cost of 26.96¢ a package, they show a gross profit per package of 2.04¢; a gross profit of 7%, or a shade over. Based against overheads of 12.45, which is the high figure for the past year, and in which cigarettes were cut, against the 7% overhead, they are not earning their overhead by 5.45%.

THE CHAIRMAN: You mean to say the overhead was 12.45?

MR. GORFINKEL: Yes, and he sold cigarettes on a 7% basis, against a 12.45 overhead.

In other words,

they had not made their overhead, and we call it a loss-leader, because you certainly cannot stay in business if you do not make your overhead, and, as we previously mentioned, if they sold 97% of their products on the same basis they would

be bankrupt, and on that, gentlemen, we rest our case. We are open for any questioning. At this moment I might say there was a little inquiry made by the gentlemen in regard to what a wholesaler and retailer is, and I don't know if I made myself absolutely clear, but if you do want to clear it up, the interpretation of retailer/wholesaler, our auditor, who helped us get these figures to your attention, Mr. Cecil Dineberg, will be only too glad to give you the information.

I might add, due to the emergency, in my appeal to be made at Ottawa, what are the powers of this Commission in recommending that emergency measures be taken so as to benefit the majority of the retailers by your findings, because they ^{cannot} certainly exist, gentlemen, until some time at the end of the year or the spring. You cannot keep on kiting indefinitely; the old Ponsi scheme catches up with you. As far as our company is concerned, our ethics in the tobacco business have been for price maintenance at the manufacturer's suggested level -- that is, as of today -- and as quick as we can get a ruling as to what can be done, that is just practically how long we can keep on with the same business tactics that we have employed in the past -- but we might have to change our tactics. Our company cannot stand still. Pending your findings, and while presenting this brief, we have held the line. We have suffered to the point of 39%

in one location and 27% in another. Let the cards fall where they may, we cannot go ahead and dissipate the assets of our creditors, and we certainly do not intend to dissipate what has stood for twenty-five years, in building up, under present conditions. If we have to jump into the parade, we will have to jump in. I know the small retailers cannot, and we don't want to. What you will recommend on behalf of the small retailers is of great importance because, as I said before, from May to December is a long, long time, and it is an old tune that the song was written to. We have to have some encouragement for what can be done for these small retailers. Thank you, gentlemen.

THE CHAIRMAN: Is there any other member of the delegation who wishes to add anything?

MR. GORFINKEL: If you wish to question, there is Mr. Veilleux from a small store, and he has been suffering very badly.

MR. VEILLEUX: I have been in business since after the war. I am a veteran. I came back from overseas and I put all my gratuity and all my re-establishment credit in the business. I was disabled. I have worked for eight years without a break, no holidays and no Sundays off. I can never afford to be sick, or go for a holiday. I stick to my job. My wife and I have to hire employees to help us sometimes, but lately I had to dismiss them because I could not afford to keep them. We have got to think of our daily

bread first. It wasn't too bad until last summer, and last September when the Thrift came into my district; they were the first ones to start this, and everybody else followed.

THE CHAIRMAN: When was that?

MR. VEILLEUX: September, 1953. Of course, there were two other groceries in my neighbourhood; they followed. I stuck to my own end of it and I have lost an awful lot of business, and the people think I am a crook, and they think I am not modern to follow up the trend. It is my daily bread, and I cannot go on like this.

MR. FAVREAU: What price was Thrift selling at?

MR. VEILLEUX: 33¢.

MR. FAVREAU: And you?

MR. VEILLEUX: I am still selling at 37, which is the regular price.

THE CHAIRMAN: 33¢ including the Quebec tax?

MR. VEILLEUX: Yes.

THE CHAIRMAN: 29¢ plus the 4¢ Quebec tax?

MR. VEILLEUX: Yes, that makes 37 (sic).

THE CHAIRMAN: Thrift was selling at 29 plus tax?

MR. VEILLEUX: Yes, 33¢. They are subject to the tax as well as I am. It means that if I want to save one cent on a carton of cigarettes I can go and buy from them instead of the jobbers; I would get it 1¢ cheaper than from the jobber.

MR. FAVREAU: How much do you pay for your cigarettes?

MR. VEILLEUX: From the jobber?

MR. GORFINKEL: \$2.91 plus 40¢ a carton -- for every ten packages -- which is 29.1¢, plus 4¢ Quebec tax.

THE CHAIRMAN: In other words you pay \$3.31 and you could buy the same ten packages for \$3.30?

MR. VEILLEUX: Yes, that is it; I could save 1¢ by buying from the retailer chain store, and I would save money, instead of buying them from the jobber.

MR. FAVREAU: How much does Thrift pay?

MR. VEILLEUX: Any of the chain stores pay 26.96 plus 4¢.

MR. FAVREAU: 30.96?

MR. VEILLEUX: 30.96, and they sell for 33¢.

THE CHAIRMAN: What Mr. Veilleux's statement just now means is that the chain store retail price is 1¢ on 10 packages lower than he as a retailer pays to the jobber.

MR. GORFINKEL: Yes. I said that if the retailer had to meet this competition he would lose 1/10 of 1¢ per package.

MR. VEILLEUX: This kind of situation cannot go on. I am facing the future, and whether I have to close or not I don't know. I am depending on the outcome of this. I am hanging on hoping for the best, and if nothing is done I

will have to join the ranks of the loafers or the tramps. I cannot go to work for anybody else; I am a disabled man.

THE CHAIRMAN: Because of the situation that Thrift can sell at 33 and still make 2.04 per package?

MR. GORFINKEL: Yes, that is 2.04 per package.

MR. FAVREAU: whereas Mr. Veilleux would lose 1/10 of 1¢?

MR. GORFINKEL: That is right. That is more or less an answer to that question before, how the chain stores buy.

THE CHAIRMAN: Mr. Veilleux, do you handle other things?

MR. VEILLEUX: Magazines, newspapers, cigarettes, tobacco, cigars, chocolate and candy, and of course every little store like mine has a little ice cream cooler; we sell ice cream. You know, all those things have a very small profit. It is a fixed price -- the magazine prices are marked on. We cannot make it up on meat or vegetables.

MR. FAVREAU: You are complaining that the chain stores are selling at lower prices than you and this is competition which you cannot meet: If you were allowed to buy at the same price as the chain stores, would that solve your problem?

MR. VEILLEUX: I would still make the same profit. It is very much discrimination, and

it has given rise to the situation today. Why favour the price for one, and have another price for somebody else, and another price for somebody else -- why? I mean, the whole thing, as I see it, is nothing but discrimination.

MR. GORFINKEL: I wonder what the chain store price would be if this man could buy on the same basis? We must bear in mind that if every small individual merchant could buy the same as the Thrift-Stores, where he only acquires a week's supply, and he has not got any money, how is he going to buy from the manufacturer? If he could get it in broken quantities the overhead would be so high it would raise his price by 25%. In other words, Thrift buys in case lots, and Mr. Veilleux buys 3 or 4 or 5 cartons of each brand, and the following week he buys them again, not only because he has not got money, but cigarettes are a perishable article and unless they are turned over fresh they are no good. The chain stores turn over their stock approximately twenty-six times a year. That is why the jobber services the small store; he turns the stock over approximately fifty-two times a year. If he did not do that you would have sawdust and not tobacco in the cigarettes.

MR. VEILLEUX: I think the whole thing is really unfair, gentlemen. The way it was before, we had a very small profit but we were contented with it because we had a big volume. Everybody was happy; nobody was kicking, and the profit was

very small; why have we left that? The old way was the best way, and today it is chaos all over the place. They should have left it the way it was. I think it was the best way.

MR. GERIN-LAJOIE: I would like to put a few questions to Mr. Veilleux. Mr. Veilleux, could you tell us if there are other variety stores like yours in the immediate surroundings?

MR. VEILLEUX: Yes; the Thrift opened up and they sell groceries; and naturally, there were two other grocery stores in the neighbourhood, and they followed up.

MR. GERIN-LAJOIE: Yes, but are there any cigar or variety stores selling only cigarettes and ice cream and candy?

MR. VEILLEUX: Yes, there is another one. He does exactly like me -- he maintains his price, and he is paying \$180.00 rent a month.

MR. GERIN-LAJOIE: Are there any drug stores around?

MR. VEILLEUX: Yes, there are. As a matter of fact, there is Melrose Drug Store next to Thrift, and he followed up. There is also a pharmacy facing me, and they followed up.

THE CHAIRMAN: They followed Thrift also?

MR. VEILLEUX: Yes.

THE CHAIRMAN: Do you mean they actually sell in order to compete with Thrift at a price that is a little below what they have to pay?

MR. VEILLEUX: They are selling lower than

what I am buying.

THE CHAIRMAN: And they are buying at the same price as you are?

MR. VEILLEUX: Yes; they sell a carton for \$3.30, and I am paying for that \$3.31.

THE CHAIRMAN: And these drug stores, do they pay \$3.31 and sell for \$3.30?

MR. VEILLEUX: I don't know. Some stores are joined together in an association -- a co-operative. They buy on a kind of co-operative basis, and I don't think they have jobbers' prices. I would be surprised if they do; but they have probably a better price than me, anyway.

MR. FAVREAU: Are there a few establishments with buying systems?

MR. GORFINKEL: There is the odd one -- I.D.A.

MR. FAVREAU: I.D.A. is the drug store?

MR. GORFINKEL: Yes.

MR. VEILLEUX: They probably have a "c" account, or something like that, as far as I can make out.

MR. GERIN-LAJOIE: In what year did you start business?

MR. VEILLEUX: 1947.

MR. GERIN-LAJOIE: At that time was there any greater number of small stores like yours in the immediate surroundings?

MR. VEILLEUX: No, I happened to go there; I was the first one for quite a while -- for three years; it was a brand new district -- it was a field. So, I settled there, making a

lot of sacrifices for the first three years waiting for the people to come and settle there. Now the district is built up Thrift zooms around and takes the bulk of all my business today.

MR. GERIN-LAJOIE: When you started business did you say that you were the first one -- you were the first variety store to settle there?

MR. VEILLEUX: No, there was one established; it was there all during the war. I was the second one, but I started three streets below that; it was still a field, and very few houses. I grew up with the district.

MR. GERIN-LAJOIE: Do you know if there has been any bankruptcy of stores around your place?

MR. VEILLEUX: Not much, but in Beurling Avenue there has been a shoe store and many stores gone bankrupt.

MR. GERIN-LAJOIE: What type of stores?

MR. VEILLEUX: Shoe stores.

MR. GERIN-LAJOIE: But no stores selling cigarettes?

MR. VEILLEUX: No.

MR. GERIN-LAJOIE: Well, having cigarettes as one of their main commodities?

MR. VEILLEUX: The next one after me opened up just after the New Year, and that is only four months ago. Nobody knows his condition. I don't know, but if he is paying \$185.00 a month, and if he does not sell any cigarettes, everybody can imagine what is going to happen.

THE CHAIRMAN: You say, "The next one after me"; do you mean the other variety store in the same district?

MR. VEILLEUX: I would say there would be about five streets in the district, and there are three tobacconists in all that, and all the rest are drug stores and grocery stores, and one chain store.

THE CHAIRMAN: All on Bannantyne?

MR. VEILLEUX: No, there is Beurling Avenue and Bannantyne; four grocery stores and three tobacconists.

MR. FAVREAU: Among these three tobacconists there is one which has just been established?

MR. VEILLEUX: He opened up after the New Year.

MR. FAVREAU: This year?

MR. VEILLEUX: I don't know his situation.

THE CHAIRMAN: He was a bit of an optimist to open up with this business going on.

MR. VEILLEUX: well, everybody hopes for the best.

MR. GERIN-LAJOIE: Have you got any figures regarding the number of cigarettes sold in your store, apart from the dollar figures submitted?

MR. VEILLEUX: Yes, I think I gave that to Mr. Gorfinkel.

MR. GORFINKEL: Yes, but I went for dollars, and I took an extract of the dollars; but

he has got his figures to show how many packages. I did not think you would want that.

MR. VEILLEUX: The figure that gives you the real actual one is taken from the book.

MR. GERIN-LAJOIE: Could we get those figures this afternoon?

MR. VEILLEUX: You could get them from Mr. Gorfinkel.

MR. GORFINKEL: We have got those actual figures.

MR. GERIN-LAJOIE: In your statement when you mentioned the decrease in purchases from 1952 to 1953, is it to the end of 1953?

MR. VEILLEUX: No, we took a six-month period in every year as a comparison. As I said before, the Thrift-Store opened up in September, so I took out the period from September up to February of every year making six months to show a comparison. It is no use taking the whole year. It would take days and days to do that. I took six months.

MR. GERIN-LAJOIE: From September to the end of February?

MR. VEILLEUX: I took five months; September, October, November, December and January.

MR. GERIN-LAJOIE: Because I am wondering if the opening of the new store in your immediate surroundings could account for part of the most recent decline in your sales?

MR. VEILLEUX: I will say Thrift-Store started the whole thing rolling; I am the victim of the whole thing; the other stores followed up.

MR. GERIN-LAJOIE: I think it would be of interest to the Commission to have the figures of the decrease in the volume of cigarettes themselves.

MR. GORFINKEL: I will have the figures this afternoon. I can give you the figures for the last five months, and the new store might come in there.

THE CHAIRMAN: Do you know if the new store sells at the same price as Thrift or at the price you sell at?

MR. VEILLEUX: The new one sells at my price.

THE CHAIRMAN: 37¢?

MR. VEILLEUX: Yes, he could not do any better than that.

MR. GORFINKEL: How far is the new store from your store?

MR. VEILLEUX: Two blocks; it is on Beurling.

MR. GORFINKEL: What street are you on?

MR. VEILLEUX: Bannantyne.

MR. GORFINKEL: What street is he on?

MR. VEILLEUX: Beurling, but it is the same street -- the corner of Rolland; I am at the corner of Rolland and Bannantyne, and it is too far away to affect me. He is serving a district which is way up.

MR. GERIN-LAJOIE: I have no more questions, thank you.

THE CHAIRMAN: It is now a quarter to one, and I rather think that Mr. Lajoie will want to ask a number of questions of Mr. Gorfinkel, so I think we will adjourn now until 2.15.

---The hearing adjourned at 12.45 until 2.15 p.m.

---On resuming at 2.25 p.m.

THE CHAIRMAN: we will resume, gentlemen.

MR. GORFINKEL. First of all, here are the figures you asked for on cigarette packages from Mr. Veilleux this morning.

MR. GERIN-LAJOIE: Mr. Veilleux is not here this afternoon?

MR. GORFINKEL. No, he left his wife in the store and he had to go back to relieve her.

THE CHAIRMAN: Before you start questioning, Mr. Lajoie, did you file this document with us?

MR. GORFINKEL: No, I want a copy made of it. Would you want a copy of it?

MR. GERIN-LAJOIE: I would like to put questions about that document.

THE CHAIRMAN: I was wondering why you presented it?

MR. GORFINKEL: I mentioned ^{the figures} to you, gentlemen, because you were marking them down and I thought perhaps you did not get them accurately. I could file another one.

THE CHAIRMAN: I think we would like to have it; it has been used for information.

MR. GORFINKEL: well, I will have three photostatic copies made of it.

MR. GERIN-LAJOIE: Mr. Gorfinkel, you are exhibiting a statement of sales of cigarettes made by Mr. Veilleux during the years 1952, 1953 and 1954; could you explain briefly how this document reads?

MR. GORFINKEL: Five months; August, September, October, November and December.

MR. GERIN-LAJOIE: I see there is a column with the dates?

MR. GORFINKEL: And the purchases.

MR. GERIN LAJOIE: The second column shows purchases?

MR. GORFINKEL: No, the first column shows the dates. The second column shows, I imagine, the number of bills -- the wholesaler's number of his bills -- "Bill No. 6486, 6488."

MR. GERIN-LAJOIE: And the third column? Where do you read the sales?

MR. GORFINKEL: Over here in the last column; those are in dollars.

MR. GERIN-LAJOIE: And the number of packages or the number of cigarettes?

MR. GORFINKEL: Right here (indicating).

MR. GERIN LAJOIE: The fourth column?

MR. GORFINKEL: Yes, total amount of cigarettes.

MR. GERIN-LAJOIE: Cigarettes or packages?

MR. GORFINKEL: 12,000 -- that would be

cigarettes.

MR. GERIN-LAJOIE: So for the five months covered in 1952 the number of cigarettes sold would be 523,350, and for 1953 495,730, and for 1954 331,100: I wonder if it is worth while filing this document? Mr. Veilleux is not here to explain it.

MR. GORFINKEL: His dollar value is here though; you can very easily estimate it if you want to get a figure by quantity, at 33¢ a package.

THE CHAIRMAN: Well, we will file it and do whatever we can with it.

MR. GERIN-LAJOIE: All right, this document will be Exhibit M-2.

THE CHAIRMAN: M-2, yes.

---EXHIBIT M-2: Statement of Mr. Veilleux.

THE CHAIRMAN: This is a document bearing date 1952; address, Rolland, corner of Bannantyne, consisting of eight sheets of figures. It is filed as Exhibit M-2.

MR. GERIN-LAJOIE: And this document refers to the statement appearing on page 7 of the annex of the brief presented by the Quebec Retail Tobacco Association; that is right?

MR. GORFINKEL: A to dollars and cents on our brief. we didn't check the cigarettes; we just took the dollar value.

MR. GERIN-LAJOIE: with reference to your brief submitted this morning, could you tell the

Commission how your Association is constituted?

MR. GORFINKEL: It was founded in 1932. The secretary at that time was a gentleman of distinction today, The Honourable Paul Dozois, who is connected with the Executive of the City of Montreal.

MR. GERIN LAJOIE: Is it incorporated?

MR. GORFINKEL: No, just a body collected of members.

MR. GERIN-LAJOE: Have you got regulations or a private charter?

MR. GORFINKEL: No.

MR. GERIN-LAJOE: Have you got a list of membership?

MR. GORFINKEL: Well, as recent as May 20th I requested from the Minister of Justice that he return to us a list of members; I did not ask for paid-up members -- members we presented to him which would cover about 2,500 names.

MR. GERIN-LAJOE: But you have not got any regular membership with a membership list?

MR. GORFINKEL: No. The reason for that is that in 1932, when the situation was very deplorable due to the little card inserts, the Retail Association was formed, and then the tobacco jobbers' association was formed, and they undertook to do all the work on behalf of the small retailers and watched the trade and policed the trade for the good and welfare of all the small merchants concerned. So we figured

there was no reason for having an overlapping body doing the same work at the same time.

MR. GERIN-LAJOIE: I notice you have designated as the Honorary President of the Association, and that your brief is signed by Mr. Paul Dorion: May I ask if you have any election of officers in your Association?

MR. GORFINKEL: From time to time; we have not met in the last 15 years previous to this past Fall; we have had no elections whatsoever, and everybody served in an honorary capacity.

MR. GERIN-LAJOIE: Did you say you had a meeting last Fall?

MR. GORFINKEL: Last Fall; the first meeting, and the following meetings took place in February of this year.

MR. GERIN-LAJOIE: Did you hold elections at that time?

MR. GORFINKEL: We turned round and appointed an executive board.

MR. GERIN-LAJOIE: You have not got any fee, of course, to be members?

MR. GORFINKEL: No, we go around collecting as our bills accumulate; as a matter of fact, quite a few have accumulated in the past couple of months.

MR. GERIN-LAJOIE: May I ask you, how was this brief adopted -- by what group of persons?

MR. GORFINKEL: Yes; it is adopted by the secretary, the Honorary President, the President and

one of the executive. It had its final approval last Thursday afternoon at 3.00 o'clock.

MR. GERIN-LAJOIE: By that group of officers?

MR. GORFINKEL: Yes, on behalf of the retailers in the Province.

MR. GERIN-LAJOIE: How many retailers did you mention there were in the retail tobacco?

MR. GORFINKEL: There are approximately 27,000 retail outlets in the Province of Quebec exclusive of chain stores, which we have not taken into consideration at all.

MR. GERIN-LAJOIE: Now, could you tell the Commission, or are you in a position to tell the Commission, how many of these outlets deal exclusively with tobacco products -- or, including magazines and candies?

MR. GORFINKEL: I would go ahead and say conservatively -- this is off the record -- from my experience in the Province I would say 33 1/3% are little corner stores.

MR. GERIN-LAJOIE: You have not got the list of districts?

MR. GORFINKEL: No, I don't think anybody has, but I can say they represent, previous to 1953, 85% of the tobacco sold in the Province of Quebec.

MR. GERIN-LAJOIE: At page 209 of the Director's Report of the Commission we find a list of the several types of outlets for tobacco products; would you have any reason to question

the information given at that page, showing particularly the percentage of sales?

MR. GORFINKEL: No.

MR. GERIN-LAJOIE: Of cigarettes made by the several types of stores?

MR. GORFINKEL: No, I would have no reason to question that. I have taken extracts of that in my brief where I claimed that 67% of the tobacco is sold in stores and tobacco stands.

THE CHAIRMAN: You mean 67% is sold in stores and tobacco stands; who sells the other 33%?

MR. GORFINKEL: Fruit markets, vegetable markets, drug stores and restaurants.

THE CHAIRMAN: Including the chain stores?

MR. GORFINKEL: No, no; the chain store comes under the grocery category. In other words, tobacco stands represent a majority, like Mr. Veilleux explained this morning -- chocolate bars, drinks and magazines.

THE CHAIRMAN: Do the chain stores come in the 33%?

MR. GORFINKEL: May I have a look at that (indicating)?

MR. GERIN-LAJOIE: You will see that this page does not show the number or proportion of outlets selling tobacco products, but it shows that tobacco stores and stands do 67% of their sales exclusively in the tobacco products.

MR. GORFINKEL: No, I don't think that is

meant to be advanced exclusively as tobacco products. That is based on 100% of the sales of tobacco; 67% of the sales are sold in tobacco stores and stands, such as Mr. Veilleux said this morning, and stores which sell smokers' articles and smokers' accessories. I think that is what that is meant to convey.

MR. GERIN-LAJOIE: If you read the first paragraph, the first full paragraph at page 209, it says, "The relative importance of sales of cigars, cigarettes, and tobacco in the sales of various types of retailers is indicated approximately by the percentage which such sales constitute of the total sales of the retail division in question".

MR. GORFINKEL: That is right.

MR. GERIN-LAJOIE: So 67.6% represents the percentage of tobacco products sold out of the total sales by tobacco stores and stands?

MR. GORFINKEL: What was your first question previous to this one -- that is correct; 67% of sales show in any individual store, such as the store we heard about this morning, that they consist of cigarettes and tobacco products -- cigarettes and tobacco.

MR. GERIN-LAJOIE: Now, I am showing to you, Mr. Gorfinkel, an extract from the publication "The Maritime Merchant", showing that in the United States the proportion or percentage of cigarettes, cigars and tobacco products sold in

cigar stores and stands was 12.1% of the total tobacco sales in the United States: Do you have any reason to believe that the situation is different in Canada?

MR. GORFINKEL: Yes, there is quite a lot of difference. My report tells you what happened to the retailers some few years ago, and today they are exterminated; there is no question. That is what is going to happen here in time.

MR. GERIN-LAJOIE: Turning to the text of your brief and looking at page 3, "We may ask, here, whether the retail mark-up on tobacco products ever has been excessive, even during price maintenance days? The answer, of course, is 'no', and it can be proven by the prices that prevailed in the trade."

The mark-up at that time, if I read your figures well, was 18% on cost, while today it is 13% on cost. Would you mean that the mark-up today is unreasonably low?

MR. GORFINKEL: Yes.

MR. GERIN-LAJOIE: What would be your factors for determining whether the mark-up is excessive, or is low, or is fair?

MR. GORFINKEL: Well, every branch of the industry has increased; manufacturers' products have gone up, wages have gone up, and rents; at that time we had price maintenance -- it was no problem. The small retailer in those days made 15.3 on selling, in 1939. Now, fifteen years

later, and with more indices released by the Dominion Bureau, we find the small retailer is only making 11.81.

THE CHAIRMAN: On selling?

MR. GORFINKELL: On selling. Taking these figures into consideration, he is making approximately $4\frac{1}{2}\%$ less 15 years later than he made in 1939. That is one reason why I claim that his profit is not excessive. Now, you may question this 11.81, and you might question the 15.3.

MR. GERIN-LAJOIE: No; my question is this, Mr. Gorfinkel; what is the factor to determine whether a mark-up is fair, or excessive or otherwise? If you have a lower mark-up, but a larger turnover, the net profit at the end of the year will be, of course, a better one than if you had the reverse situation?

MR. GORFINKEL: That might be quite in order, but let us go ahead and put the question of the whole reason for the brief -- loss-leaders; where were the chain stores when they were only getting a gross profit of 15.5? Where is the factor there? why didn't they cut the cigarettes to a low ebb? If they could, they didn't. So, in establishing what is high and what is low it is usually based on what a man's overhead is -- whether he can sell for less or more. It has been definitely established in our brief that cigarettes cannot be sold on a present basis unless it covers a man's overhead; and it is not covering

a man's overhead.

MR. GERIN-LAJOIE: We will come later to this question of the food chain stores, but at page 3 you refer to an excessive or not excessive mark-up, and I am just trying to get from you what really you mean by that, or on what basis you determined whether or not it is excessive?

MR. GORFINKEL: Well, he made, on that particular page which I mention, 3.06 per package in 1939.

MR. GERIN-LAJOIE: Well, yes, but --

MR. GORFINKEL: Would you have considered that excessive when a man made a gross profit of 15.3 and he met his overhead?

MR. GERIN-LAJOIE: What factors do you take into account when you use such expressions? You don't take into account efficiency, or turnover or the competition prevailing in the locality?

MR. GORFINKEL: That is right. Competition can only be based on good service, better values and cheaper prices. Cheaper prices can only go ahead and enter the picture providing a man covers his overhead. All my figures are based on overhead, and whereas -- I want to stress this point ---

MR. GERIN-LAJOIE: May I qualify a point: when you say "overhead" you mean present overhead?

MR. GORFINKEL: Present overhead today.

MR. GERIN-LAJOIE: Whether a store is

really efficient in its administration or not?

MR. GORFINKEL: That is right. To substantiate that, as recent as this morning a chain store which operates some 75 stores, has an overhead of 14.5; it is attached to the Exhibit which I think you called M-1, Mr. Commissioner. It showed a gross profit in these efficient stores, an overhead picture of 18.2; that is exactly what we are asking for for the small retailer, and we do not want these chain stores to use 3% of their sales to the benefit of 97% of their sales.

MR. GERIN-LAJOIE: Let us come to this question of the mark-up in chain stores; isn't it true that chain stores have different mark-ups for their several products?

MR. GORFINKEL: That is right.

MR. GERIN-LAJOIE: Have you any reason to claim that the mark-up on cigarettes should be the average mark-up on the whole sales of the chain stores or any reason that the chain stores should not have a different mark-up on cigarettes from what they have as an average?

MR. GORFINKEL: Just repeat that again; I want to have it in my mind.

MR. GERIN-LAJOIE: Why should a chain store have the same mark-up on cigarettes as they have as an average on all their lines, instead of having a different mark-up as they have for all their lines?

MR. GORFINKEL: Well, it goes to prove on all their lines that they have an overhead from one of the largest, shown at 12.45, to another chain which has an overhead of 14.5. Let us say they sold every other commodity on the same basis as they do cigarettes, say they gave up every other commodity and sold cigarettes only at a lesser price; what would happen is logical -- they would go bankrupt, and that is what is facing the small retailer today.

MR. GERIN-LAJOIE: Let us put my question another way, and let us start from a mark-up for groceries taken from the "Canadian Grocery" of April 15th, 1954: I read from this guide that the average mark-ups on the several lines held in chain stores and grocery stores go from 5.7% to some 25%.

MR. GORFINKEL: Do they cover meats there?

MR. GERIN-LAJOIE: Yes, meat goes from 17 to 20.

MR. GORFINKEL: What are fruits and vegetables?

MR. GERIN-LAJOIE: Vegetables, fresh, 21: My question is, why should the mark-up on cigarettes be different from the mark-up on butter, which is 5.7?

MR. GORFINKEL: well, we have covered that in our brief, when there is no article which has a 3% turnover -- butter is not 3% of the grand turnover, because I am not in a position

to know what the percentage is, but cigarettes are 3% of the turnover, and there is no article that you can go ahead and entice the customer more than cigarettes, because it is a commodity used every hour of the day by the whole family, and that is the reason cigarettes are being picked on, and I am primarily interested in cigarettes today. I am not interested in the grocery business, but I am interested in what they are to make on a 97% average.

MR. GERIN-LAJOIE: Isn't it possible in a grocery store the turnover of cigarettes, and other factors, would justify a store in having a lower mark-up than their average?

MR. GORFINKEL: Definitely not. On my last page, which is a letter which came in from Vancouver on June 5th, we see what happens on turnover. Bear in mind there is a saturation point in turnover, and the same in foods. Cigarettes cannot be classed as foods, and a man cannot eat more than one or two steaks at a time, and there is a limit to how many pounds of butter or steaks he can sell; but in cigarettes we have noticed a particular increase in the last two years, and this particular commodity of cigarettes, that has this turnover, and the method of selling them as a loss-leader, only boils down to one point when everybody meets competition, the chain grocery will not go ahead and have any more turnover because the business will be spread among everybody

concerned, and everybody concerned will be losing money, and primarily 97% of the cigarettes sold in Canada are not sold in chains. That means that the 3% that are sold in chains are going to cause the bankruptcy of the other 97%. So, overhead, or volume, or efficiency will not enter into it for the simple reason that there is only a certain amount of cigarettes that can be consumed, whether it is 15% in 1954 over 1953, or 17% in 1953 over 1952. Now, when that saturation point is reached, and all the cigarettes are sold by everybody equally at 33¢ and they meet competition, it means that the people who are selling 97% of the cigarettes, of which 85% are merchandised by the jobber, will go out of business; and then the picture comes up, what will happen to cigarette prices then? We are looking at the present and we are looking at the future, and the cigarette item, which is only 3% of the chain stores' business, is being merchandised in this manner for a different purpose, and I am then selling cigarettes on an efficient basis or a cheaper basis. It is only being merchandised in that manner to entice customers -- "Cheating selling" -- and that is the term used by the baking industry.

THE CHAIRMAN: You referred to cigarettes as constituting 3% of the chain store business: Are you referring to the period before they cut prices, or the situation as it exists now when their sales of cigarettes have increased very

considerably, according to your brief?

MR. GORFINKEL: 3% was the figure given by -- the volume here as being the percentage sold by the chain groceries; 3% of their business.

THE CHAIRMAN: If that was their figure before they began to cut prices, and if they had increased their sales by 400%, that would mean there would now be a larger percentage than 3%?

MR. GORFINKEL: There certainly would; I have not got that percentage.

THE CHAIRMAN: What I am trying to get at is, which are you referring to when you say 3%?

MR. GORFINKEL: 1940 on, I would go ahead and say; it was their figure, but this might give you a different picture of the thing.

MR. GERIN-LAJOIE: Did you say you took the figure from the report?

MR. GORFINKEL: The figure of 3% of the volume, yes, that is correct.

MR. GERIN-LAJOIE: 1941?

MR. GORFINKEL: That is correct. The sales in chain grocery stores, which, as I expressed before we got through the McCarthy-Stevens method, has jumped from 1.7 of the total consumption in the Province of Quebec to 7%. What percentage that is in relation to the total value, I am not in a position to say.

MR. GERIN-LAJOIE: The Tobacconist's Association in Toronto appeared before this Commission and apparently they would be satisfied if the

retailers, by getting united in a co-operative style, could get cigarettes from the manufacturers at the wholesaler's price -- or, the manufacturer's price, I should say: Don't you think that might be a solution to the problem presented in your brief?

MR. GORFINKEL: No.

MR. GERIN-LAJOIE: Have you any reason to believe that the situation is different in Montreal from what it is in Toronto?

MR. GORFINKEL: Let us say the same thing would appeal to the Montreal retailer and he would be on the same level as what the Toronto retailers suggested. I glanced through it and I could not make out what you were saying. I do not think you knew what you were talking about. I have been in this business for 30 years, from scrubbing floors to heading my own company, and I think I am the most qualified man in Canada to say so, and I am not carrying any torch for the manufacturers, because I despise their guts, but I will go ahead and point out why it would not be efficient. My opinion is, if you gave every small storekeeper -- and bear in mind he does not know how to keep his books today, and we have had trouble in getting these figures -- the opportunity of buying cigarettes on that basis, they would say, "Well, we can meet chain store competition." Do you think the chain stores are going to stand still when they had a 400% increase

in sales, showing \$20,000,000.00 increase in sales by enticing customers in? They will go still lower, and the position will get more deplorable than ever.

MR. FAVREAU: But if there was legislation preventing loss-leadering?

MR. GORFINKEL: Yes, loss-leadering should be abolished.

MR. FAVREAU: I say, if retailers were allowed to buy collectively at the same price or nearly the same price as chain stores, and at the same time there would be a law to prevent them selling below cost.

MR. GORFINKEL: Correct. I want one thing to be clear: Our definition of "below cost" is after taking overhead into consideration, and we have given you the lowest barrier of chain stores and one which is an average, because we know a man cannot buy something for \$1.00 and sell it for \$1.01 and then say he is making money. Evidently he requires overhead -- rent, lights, and so on. That cannot be classed as a loss-leader. A loss-leader has got to be established by this Commission's recommendations, and it must take an average overhead for the people responsible for this deplorable condition. Taking their average, we would be satisfied -- not their lowest average, but their average -- such as Thrift, 18% on cost, 15% on selling.

MR. GERIN-LAJOIE: Is it your contention

that a store should be compelled to put the same mark-up on every item?

MR. GORFINKEL: No, he can put any mark-up he likes, but it must cover his overhead. We are not asking for price-fixing on a general level; we are asking for an established principle to be made as far as cigarettes are concerned, that they should not go below the overhead, which the chain stores are doing, and selling their merchandise to the advantage of the other 97% of their products.

MR. GERIN-LAJOIE: How would you determine the normal mark-up having in mind that the mark-ups on grocery items (because we are talking about grocery stores and grocery chain stores) vary from 5 to 25%?

MR. GORFINKEL: But there is no particular article in there, that averages from 5, 6 and 7, that compares with cigarettes. In my brief I mention that cigarettes should be treated differently. Do grocery stores, with things like butter, flour, cheese or eggs, take off the top of their price 66 2/3% in Government taxes and leave a balance of 1/3 for the manufacturer, the jobber and the retailer? Definitely not. That is why cigarettes cannot be classed with any other commodity, because there is no other commodity sold in any establishment in Canada that is comparable to cigarettes because 18¢ off 26.94 the Government takes off the top.

MR. GERIN-LAJOIE: Do you believe that has anything to do with the mark-up on cigarettes?

MR. GORFINKEL: There is no mark-up; they are selling them at a loss.

MR. GERIN-LAJOIE: well, the normal mark-up which you have in mind.

MR. GORFINKEL: Well, I am giving you one which is comparable to what the chain stores are making. We seem to think the chain stores are low-cutting themselves and giving the public values; they are doing that by putting their hands in the small retailer's pocket and saying, "We are good fellows", but they don't go on to tell you how much cheaper their other articles are. As far as the big four chain food stores are concerned, pick up any Thursday afternoon's paper and you will see that there must be collusion some way -- either that, or they are all doing a mind-reading act: "Strawberries, 19¢; 19¢; 19¢; 19¢." Out of the four leading chains one may say, "2 for 37¢", and it goes on all the way down the line -- "Tomatoes, 19¢; 19¢; 19¢; 19¢". There must be something wrong. Suddenly they started off with cigarettes, "33¢, 33¢". Why not take butter or tomatoes and start cutting between themselves? Because they are afraid of their own product; they are afraid to dirty their own linen, and that they will be the cause of their own undoing. That is what will happen if they maintain their merchandising principles

that they have today.

MR. GERIN-LAJOIE: Are you not aware that they are cutting price -- I am not saying using other products as loss-leaders -- but cutting prices on quite a number of other products?

MR. GORFINKEL: For example?

MR. GERIN-LAJOIE: Bread.

MR. GORFINKEL: Well, they show their own brand of bread.

THE CHAIRMAN: I think, while we would like to have your evidence on a number of matters, if you try to answer the questions as briefly as you can we may save a great deal of time.

MR. GORFINKEL: I appreciate that, but I might say the way the questions are put and the answer I want to give, I want to make sure that my interpretation is not wrong of what I am trying to convey in my brief, which is the most important one. Although I might be lengthy in explaining it, I want to be very precise in anything I say, because if I am not precise everything we might say might be in vain, or misinterpreted. Howard Huston in the Montreal Herald of May 26th likens the presentation of this petition of small retailers to Custer's Last Stand. Custer's Last Stand was made at Little Big Horn in the U S A against the Sioux Indians in the year 1876. 264 men were slaughtered. In 1854 the same thing happened to the Gallant 600 at Balaclava; only

200 came back, namely, one-third. The same is happening today to the small tobacconist. If a little extra time will save him let us not quibble for the few minutes involved. I was prepared for that because I knew on an 18-page brief it had to take a whole lot more time. I do know we have been working on this for six or seven months. we have covered every phase of it, and I don't care what the grocery stores sell their merchandise at, I know they cannot sell it at 7% and stay in business without going bankrupt, and that is what is facing 66 2/3 of the small men, and I cannot tell you how many it involves, but if the Charity Chests have to support that man it is going to be a deplorable thing. The same thing that goes on in other countries will cause unrest, because a man is not responsible when he cannot give his family bread and milk.

MR. GERIN-LAJOIE: I would like your opinion on one or two points, and the first one is this: Are you criticizing the whole practice of stores generally of making larger profits on certain items and smaller profits on others -- "yes" or "no"?

MR. GORFINKEL: As I mentioned in my brief ---

THE CHAIRMAN: we know what you are criticizing in your brief.

MR. GORFINKEL: well, will you repeat the question?

---question repeated by reporter.

MR. GORFINKEL: Not unless it covers their overhead. I have no objection to them selling their merchandise at any price.

MR. GERIN-LAJOIE: I would like to have as short an answer as possible on this point: Isn't it possible that our economy is undergoing changes under which it would really be cheaper to have cigarettes and tobacco products sold in drug stores and chain stores instead of tobacco stores?

MR. GORFINKEL: Are you insinuating there are too many outlets?

MR. FAVREAU: He is asking a question.

THE CHAIRMAN: Mr. Gorfinkel, what Mr. Lajoie is doing is to get your view. If he asks a question ---

MR. GORFINKEL: It is the way he asks it.

THE CHAIRMAN: Well, what he thinks is not important.

MR. GERIN-LAJOIE: You know Mr. Gorfinkel, I may appear to take an opposite position but I am just going to find out what is in your brief. Someone may come in the box with different views, opposite views to yours, and I would still take an opposite position because I am trying to have the whole set of facts before the Commissioner.

MR. GORFINKEL: If we want to kick over tradition I will say it is practical -- and eliminates 90,000 retailers. You could put a

push-cart on the corner.

MR. GERIN-LAJOIE: Are you taking the point of view of going by tradition alone, or are you taking this position for the benefit of the consumer public who is interested in having as cheap and low prices as possible?

MR. GORFINKEL: I don't think the consuming public are looking to buy merchandise to the detriment and loss; they want to buy at the lowest possible price. They want to buy it at an equitable price where a man makes an honest living. Possibly it might be better to take away the tobacco business from the chain grocery stores altogether. I don't see what right they have in selling it. Keep it in the tobacco stores where it belongs, because if economy changes that quickly it is going to happen to suits and cars and everything else.

THE CHAIRMAN: Perhaps we can put the question differently: In your opinion does the tobacco store, as such, perform a function valuable to the consumer that is not performed by the drug store or the chain store which sells cigarettes?

MR. GORFINKEL: It certainly does.

THE CHAIRMAN: what is the function?

MR. GORFINKEL: I don't want to elaborate on my question ---

THE CHAIRMAN: what are the functions which the tobacco store performs which are valuable to

the consumer which are not performed by the chain store or drug store or restaurant?

MR. GORFINKEL: I think more time is being taken up by questions which are covered in this brief. The small retailer comes to his place earlier in the morning to serve the factory worker, and I don't know why the question is being put again. I am being accused of taking time, but I have tried to cover as much as I can in the brief. I wish the questions to be put, and if they are not in the brief I will be prepared to answer them, but my answers are all in my brief and I stand on our brief.

MR. GERIN-LAJOIE: You showed to the Commission this morning figures regarding the increase in tobacco releases in 1951, 1952 and 1953; do you know from what source these figures are taken?

MR. GORFINKEL: Yes, they are Government figures released by the Department of Inland Revenue -- National Revenue -- and they are released over the Canadian Press to all the leading publications in Canada. This happens to be "The Canadian Tobacco Journal".

MR. GERIN-LAJOIE: For February 1954?

MR. GORFINKEL: February 1954. Those are Government figures; they are not their figures.

MR. GERIN-LAJOIE: Would the Commission like to have this filed?

MR. GORFINKEL: Yes, I am making photo-

static copies of that. Or, if you wish, if it is the custom to go ahead and file it, I would appreciate two copies being made by the Commission and sent back to me. I will file the original and I would like to get two photostatic copies.

THE CHAIRMAN: All right, mark this "Tobacco Releases" as M-3.

---EXHIBIT M-3: "Tobacco Releases"

MR. GERIN-LAJOIE: On page 6 of your brief you refer to the situation in France: I wonder if this information is completely up-to-date? You may be able to tell the Commission, and I would like to ask you if you are familiar with the French decree of August 1953 which prohibited resale price maintenance in general across the country?

MR. GORFINKEL: Well, I don't know if you are acquainted with the facts. Cigarettes are sold in France in the same manner ---

MR. GERIN-LAJOIE: But is this information absolutely up-to-date?

MR. GORFINKEL: Price-fixing does not apply to government bodies, and it is up-to-date.

MR. GERIN-LAJOIE: Could you tell the Commission up to what time you have checked this information?

MR. GORFINKEL: That information has not been checked in the last year and a half, but it is still a Government monopoly and the Government sets the prices, and there is no

control of what the Government should or should not do.

MR. GERIN-LAJOIE: The last question: At the top of page 6, "The suggested Dominion Board would in no way prevent competition between tobacco manufacturers and retail outlets, . . ." Could you explain as briefly as possible what competition would be left after a Government board would have fixed prices?

MR. GORFINKEL: If one tobacco manufacturer wants to sell cigarettes at 13.48 that does not say competitor cannot go ahead and sell it at \$13.00. Or, possibly three manufacturers have three different prices for their popular brands. The Commission would have to set three different ranges of gross profit. In other words, when the Imperial Tobacco Company wants to sell at 13.48 it would not stop MacDonald's from selling theirs at 13.00. The manufacturer would apply for his price, and the Dominion Board would only set the percentage of profit.

MR. GERIN LAJOIE: What competition would be left then between retail outlets?

MR. GORFINKEL: What competition would be left? He would have to go ahead -- if loss-leaders were regulated or abolished, or made illegal, he would have to maintain the overhead.

MR. GERIN-LAJOIE: No. If there is a Dominion Board fixing the margin of profit so that there would be a uniform margin of profit across the

country, or a certain section of the country?

MR. GORFINKEL: For cigarettes?

MR. GERIN-LAJOIE: Yes, for cigarettes only. I wonder if there would still be competition between retail outlets? You seem to say no, and I wonder ---

MR. GORFINKEL: There would be no competition between retail outlets; there would be no competition between outlets as to the price. The resale price would be established by the Board.

MR. GERIN-LAJOIE: Because you mention in your brief the Board would in no way prevent competition between retail outlets?

MR. GORFINKEL: Just one minute. There would be no competition between the tobacco manufacturers and the retail outlets. In other words, if a retailer bought them from one manufacturer and sold them at 33, that would not stop another manufacturer selling him cigarettes to sell at 32¢.

MR. GERIN-LAJOIE: But there would be no competition between one retail outlet and another retail outlet.

MR. GORFINKEL: No.

THE CHAIRMAN: Referring to your brief at the bottom of page 4 and the top of page 5, you mention the situation in the United States, particularly in Greater New York with respect to a cigar chain, and you have mentioned that in 1929 one cigar chain had about 400 stores in Greater New York alone, and today they have

less than a dozen, and you say the situation is the same all over the United States. Would you say there has been a similar process in Canada?

MR. GORFINKEL: No.

THE CHAIRMAN: That the tobacco chains have fewer stores now than they had then?

MR. GORFINKEL: No, it does not exist in Canada.

THE CHAIRMAN: You do not think so?

MR. GORFINKEL: No. There are as many chain tobacco stores in Canada today as there were years ago, and the reason for that was we had price maintenance and everybody was happy, but in this particular case in 1929, whereas this chain only had 400 stores in Greater New York, it had close to 3,000 across the United States.

THE CHAIRMAN: Would that be United Cigar Stores?

MR. GORFINKEL: Yes, I didn't want to mention the name because it may be conflicted with the one in Canada, and there is no relationship at all; they are two different companies.

THE CHAIRMAN: I don't know much about cigar or tobacco chains in Canada, but I do know of some and I know of some places in which they have many less stores today than they had 25 or 30 years ago.

MR. GORFINKEL: That might be due to losing leases and giving up locations because they became unprofitable.

THE CHAIRMAN: well, would that not mean that there are fewer stores in each chain than there were then?

MR. GORFINKEL: As a whole I think you will find the figures have increased, if you take the barometer on certain companies.

THE CHAIRMAN: I think I know the answer to this question, but I want to be sure what the brief means at the bottom of page 5 where you are referring to the minimum mark-up over the domestic manufacturers' lowest unit list price -- which I take it would be the manufacturers' selling price to the wholesaler?

MR. GORFINKEL: Yes.

THE CHAIRMAN: And you want 22 to 22½ per-cent spread between that and the retail price?

MR. GORFINKEL: Yes.

THE CHAIRMAN: would that produce a uniform price at the present time of 33¢ a package?

MR. GORFINKEL: It certainly would.

THE CHAIRMAN: Plus the tobacco tax in Quebec?

MR. GORFINKEL: Yes, plus the tobacco tax.

MR. FAVREA: If there was a general increasing of price maintenance, couldn't chain stores still compete by selling on a high scale American cigarettes, like they did last year?

MR. GORFINKEL: No. If the Canadian manufacturers want to meet that competition, they can and make a profit. I don't know how much

profit they are making. That is something for the manufacturers, but there is one manufacturer in Canada who met that competition, where he made American cigarettes unprofitable to bring into Canada. In other words, they brought in a cigarette two years^{ago} which usually sold at 29¢, and another tobacco company under the name of Central Tobacco brought out a competitive brand at the same level called Golden Gate.

THE CHAIRMAN: What happened to it?

MR. GORFINKEL: It has taken the place of the American brand.

THE CHAIRMAN: Is it selling in large quantities now?

MR. GORFINKEL: In fair quantities, it goes into the millionth billion, or something like that.

MR. FAVREAU: What is the price to the retailer?

MR. GORFINKEL: I think it is \$12.00 a dozen against \$13.48. There is one thing I want to make clear -- and I happen to know -- and that is, to bring in American cigarettes to Canada today less than 12.25 to 12.30 a dozen, and it is possible to buy Canadian cigarettes at \$12.00 a dozen; it is impossible to bring them in for less than 12.25 or 12.30 a dozen, which is 24.60 a package, but you can get a Canadian cigarette of a superior quality for 24¢ a package from the manufacturer.

THE CHAIRMAN: But those Canadian cigarettes are not what we ordinarily call standard cigarettes?

MR. GORFINKEL: Yes, they are standard -- standard pure Virginia.

THE CHAIRMAN: well, they are not the ones that are most commonly used?

MR. GORFINKEL: No, they are not the popular brands. It is a new brand, and it is the same Golden Virginia tobacco as all the rest of them; they are the light Virginia-type tobacco as used in Canada.

THE CHAIRMAN: The same type of tobacco as used in the popular brands?

MR. GORFINKEL: Yes, but I don't say the same quality. Tobacco ranges from anywhere from 70 to 90¢ a pound, and the popular cigarettes are supposed to be No. 1 quality, which ranges close to 90¢ a pound, I believe. However, I think the manufacturers are more qualified to give you that information.

(Page 1400 follows)

(Following Mr. Robert Young, reporter)

C A N A D A

PROVINCE DE QUEBEC

DISTRICT DE MONTREAL

CITE DE MONTREAL

COMMISSION DES ENQUETES SUR LES COALITIONS

Président: Me C. RHODES-SMITH, c.r.

Commissaire: M. A. S. WHITELEY, .

" Me GUY FAVREAU, c.r.

COMPARUTIONS:

Me PAUL GERIN-LAJOIE

agissant pour le directeur des recherches

Mr. ROY DAVIDSON, économiste pour le directeur
des recherches

Enquête tenue à Montréal, les 7,8,9, et 10
juin, 1954 - sur les ventes à pertes (Loss
leaders).

Le 7 JUIN, 1954

Me RHODES-SMITH, c.r.:

Messieurs, la Commission sur les pratiques restrictives du commerce reprend ce matin ses séances dans l'enquête qui se poursuit sur le sujet des ventes à pertes (loss leaders).

Les audiences se sont ouvertes à Ottawa le 27 mai. Et puis, par la suite, la Commission s'est transportée à Toronto où de nombreux témoins, soit aux noms d'associations ou d'entreprises, soit en leur propre nom, ont soumis des mémoires et présenté des points de vue forts intéressants.

Ici, à Montréal, nous espérons recueillir cette semaine d'autres renseignements et opinions motivés qui faciliteront la tâche de la Commission dans l'étude de cette question discutée des ventes à pertes et qui nous permettront de soumettre au Ministre de la Justice un rapport aussi au point et aussi utile que possible.

Je tiens à répéter, pour le cas où il ne serait pas possible à certains intéressés de nous soumettre leurs représentations ici, cette semaine, que la Commission après avoir siégé à Edmonton, à Vancouver et en d'autres centres du pays, terminera ses séances à Ottawa au cours du mois de septembre. Il nous plaira d'entendre alors toute personne ou association désireuse de comparaître avant que ne commence la préparation du rapport.

I will repeat in English what I tried to say in French.

LE 7 juin, 1954, a comparu:

A. J. DUHAMEL,

représentant l'Association des Distributeurs de Tabac en Gros de la Province de Québec et l'Association des Marchands de Tabac en Gros de l'Est de la Province de Québec.

Me FAIVREAU:

D Quel est le titre de l'Association ?

R L'Association des Distributeurs de Tabac en Gros de la Province de Québec.

D Etes-vous le président ou le secrétaire ?

R Je suis le président, A. J. Duhamel est mon nom, monsieur J. A. Ladouceur est le vice-président et monsieur J. A. Manseau est le secrétaire. Pour l'Association des Marchands de Tabac en Gros de l'Est de la Province de Québec, sont ici présents monsieur Lorenzo Morel, directeur, et monsieur Ernest Armstrong, membre.

D Avant de commencer, voulez-vous nous expliquer ce que comprend le territoire affecté par la juridiction de l'Association des Distributeurs en Gros de l'Est de la Province de Québec, cela commence où ?

R A Trois-Rivières, à Sainte-Anne-de-la-Perade allant à l'est; pardon, la ville de Trois-Rivières, c'est l'Association de la Province, ce n'est pas dans l'est.

D Trois-Rivières, si je comprends bien, c'est dans le territoire de l'Association de la Province ?

R Oui, qui comprend l'ouest de la province.

D Il n'y a pas de chevauchement dans la juridiction, la première association ne comprend que la section ouest de la province de Québec allant jusqu'à Trois-Rivières inclusivement et l'autre association comprend ce qui est groupé à l'est.

l'est à compter de Sainte-Anne-de-la-Perade ?

R Oui, de Sainte-Anne-de-la-Perade, c'est juste et cela va sur la côte sud pour prendre Thetford Mines. De Sainte-Anne-de-la-Perade, du côté nord, et sur le côté sud de Thetford Mines à l'est.

D Là, vous tirez une ligne ?

R Oui, à peu près.

Monsieur DUHAMEL:

Monsieur le Président, vous avez reçu copie des mémoires de notre Association. A présent, est-ce qu'il serait nécessaire que je lise le mémoire ? Je vous demande cela, monsieur le Président, dans le but d'épargner du temps. Est-ce que vous désirez nous interroger ou quoi ?

Me FAVREAU, c.r.

C'est la coutume dans chaque cas de lire le mémoire et l'on vous permettra de faire des remarques additionnelles, si vous le désirez, et cela permet également aux membres de la Commission de se rafraîchir la mémoire.

Monsieur DUHAMEL:

Très bien, monsieur le Commissaire, je vais lire le mémoire soumis:

" MEMOIRE SOUMIS CONJOINTEMENT PAR
L'ASSOCIATION DES DISTRIBUTEURS DE TABAC EN GROS
DE LA PROVINCE DE QUEBEC

et

L'ASSOCIATION DES MARCHANDS DE TABAC EN GROS DE
L'EST DE LA PROVINCE DE QUEBEC.

EN RAPPORT AVEC LA CONCURRENCE DELOYALE
DANS LA VENTE DES CIGARETTES

Messieurs,

L'Association ci-haut mentionnée est composée de grossistes et distributeurs de cigarettes et autres produits de tabac.

Comme résultat de la législation interdisant le maintien des prix fixés, passée malgré de très fortes protestations, les membres de l'Association et les débitants de tabac à qui ils fournissent leurs marchandise ont souffert un sérieux préjudice et la situation, aujourd'hui, est si précaire que des milliers de petits détaillants sont pratiquement acculés à la faillite et, par le fait même, les membres de l'Association sont placés dans une situation extrêmement difficile. A cause de la concurrence déloyale dont souffrent les débitants de tabac de la part de commerçants qui ne sont pas des détaillants réguliers de cigarettes et autres produits de tabac, les ventes au débitants de tabac ont considérablement diminué et ces derniers ne peuvent rencontrer leurs obligations, causant ainsi de lourdes pertes financières aux membres de l'Association.

Les membres de l'Association sont au courant de l'enquête conduite à la suite de nombreuses plaintes concernant la concurrence injuste faite par la vente des cigarettes dans les magasins à succursales et autres, dont le commerce principal est tout autre que la vente des cigarettes et tabacs.

La plainte a été portée que les cigarettes sont vendues par les magasins à succursales et autres, comme moyen d'induire les clients à entrer dans les dits magasins et acheter des cigarettes à des prix inférieurs aux prix chargés par les débitants de tabac qui, afin de rencontrer leurs frais et dépenses,

doivent réaliser un profit raisonnable de la vente des cigarettes.

Le profit du détaillant, c'est son salaire. Le profit, c'est aussi la récompense de ceux qui ont risqué leurs économies dans le commerce. Un détaillant prospère réussit à satisfaire de plus en plus ou de mieux en mieux ses clients, les consommateurs. Un détaillant prospère est un actif pour un pays, une province, une ville, alors qu'évidemment, c'est tout le contraire pour un détaillant déficitaire.

Mentionnant tout particulièrement la province de Québec où on trouve 27,000 débitants de produits de tabac, lesquels, avec les membres de l'Association, emploient 75,000 personnes, la Commission est informée qu'avant l'abolition des prix fixes, les cigarettes se vendaient 33 cents le paquet, plus une taxe de 4 cents, formant un prix total de 37 cents. Immédiatement après la mise hors la loi des prix de vente fixes, un élément dangereux s'est développé dans la province de Québec alors que les épiceries à succursales coupèrent les prix des cigarettes à 35 cents le paquet, et 3 paquets pour \$1.00. Ceci, la Commission voudra bien l'admettre, mit en danger les petits débitants qui ne pouvaient vendre leurs cigarettes à moins de 37 cents le paquet s'ils voulaient faire face à leurs dépenses et réaliser un profit raisonnable. Il ne leur aurait resté aucune marge de profit puisque le prix payé au distributeur ou grossiste était de 33 1/10 cents le paquet.

Dans un grand nombre de cas, le débitant, afin de conserver sa clientèle, fut forcé de vendre ses cigarettes sans profit. Au cours de l'année dernière, il dût se rendre compte qu'il se trouvait dans la très embarrassante situation de ne pouvoir

s'acquitter de ses obligations vis-à-vis du distributeur qui lui avait fourni sa marchandise. Ceci fut provoqué par la tactique suivie par les magasins à succursales de se servir des cigarettes comme appât pour attirer les clients à leurs magasins et une fois attirés, leur vendre à profit toutes sortes de produits autres que les cigarettes.

Les pharmacies, les restaurants, les tavernes, etc., suivirent la tactique des magasins à succursales, ce qui empira la situation. Les grands magasins à succursales, constatant que la tactique de couper les prix était devenue plus ou moins générale et que le public qui achetait les cigarettes à ces prix coupés contribuait à l'expansion de leurs commerces, allèrent plus loin et réduisirent de nouveau le prix, cette fois à 33 cents le paquet et dans certains cas à 31 2/3 cents.

En utilisant la vente des cigarettes à prix coupés comme appât pour la clientèle, les magasins à succursales et autres ont réalisé un fort volume d'affaires, au détriment de leurs compétiteurs. Si les magasins à succursales avaient été seuls à couper le prix des cigarettes, ç'aurait été un avantage permanent mais, comme les pharmacies, les restaurants, les tavernes, etc., avaient emboîté le pas, le résultat inévitable fut que le débitant indépendant qui avait opéré son commerce toute sa vie et dont le gagne-pain dépendait de la vente des cigarettes et autres produits de tabac avec un profit équitable, s'est vu acculé à la faillite ou obligé de discontinuer son commerce.

Dans le Québec où une taxe sur le tabac est en vigueur, cette tactique eut d'autres graves répercussions, car, en plus de causer de lourdes pertes aux débiteurs et aux distributeurs,

le revenu provincial du tabac s'est indirectement trouvé touché parce que le distributeur ou grossiste, en plus d'essuyer de fortes pertes quand le détaillant ne rencontre pas ses obligations, fait faillite ou ferme ses portes, est forcé de débiter la taxe du tabac au compte della province.

Si l'on veut prévenir la faillite des débitants de tabac et des pertes aux membres de notre Association, il faut immédiatement faire cesser cette pratique de réduire le prix des cigarettes en bas d'un prix qui puisse permettre de rencontrer les frais et prévoir une marge de profit raisonnable. Un bon nombre de petits détaillants ont déjà été forcés de discontinuer leurs commerces.

Les débitants de tabac dont l'existence et le bien-être sont nécessairement, dans les circonstances, le souci des membres de l'Association, ne reçoivent absolument aucune protection. Lorsque les débats eurent lieu au sujet de cette législation, de fortes recommandations furent faites par les porte-parole du travail organisé qui insistèrent sur le fait qu'à moins d'exemption pour leurs membres et leurs unions, ils seraient handicapés parce qu'ils jugeaient essentiel de maintenir des niveaux de salaires devant être payés par les employeurs avec qui ils maintenaient des relations contractuelles ou dans des industries où existaient des conventions collectives de travail régies par des décrets sanctionnés par le lieutenant-gouverneur en conseil. Ces décrets permettent, d'une part, la surveillance des industries par les ouvriers organisés qui y sont assujettis et obligent les employeurs, que leurs salariés soient membres des unions ou non, à payer les taux minima fixés en vertu des décrets.

L'Association soutient que les débitants de tabac ont injustement souffert de la législation présentement en vigueur en n'obtenant pas la protection ou l'exemption accordée aux membres des unions de métiers. Elle s'efforce d'attirer l'attention de la Commission au sous-paragraphe 3 de l'article 498 de la Loi, telle qu'amendée, qui se lit comme suit:

" This section does not apply to combinations of workmen or employees for their own reasonable protection as workmen or employees."

Existe-t-il une raison valable pour que les 27,000 débitants de tabac dans la province de Québec et les 75,000 personnes y trouvent leur gagne-pain soient privés de la même protection et ne tombent pas sous l'exemption du sous-paragraphe 3 de l'article 498 ? Notre Association, à cause de ses liens étroits avec les débitants de tabac, maintient que cet article de la Loi devrait être amendé sans délai afin d'inclure les débitants de tabac et, en tant qu'organisation, elle demande que les producteurs ...

Ici, cela devrait être manufacturiers plutôt que producteurs... rétablissent la pratique antérieure par laquelle les cigarettes pouvaient seulement être vendues par les débitants de tabac, avec une marge de profit qui leur permettait de rencontrer leurs obligations et gagner leur vie.

Les membres de l'Association ont déjà souffert des pertes considérables dû à la grande diminution des ventes à leurs débitants et, par la suite, à leur incapacité de rencontrer leurs obligations à cause de leur trop minime chiffre d'affaires.

Dans un pays démocratique, la politique de vivre et laisser vivre devrait prévaloir et la fixation d'un prix minimum équitable pour la vente d'articles tels que les cigarettes ne cause aucun préjudice au consommateur puisque, dans la majorité des cas, les petits magasins dont le commerce principal consiste dans la vente des cigarettes sont ouverts à toute heure du jour pour l'accommodement de leurs clients et du public en général.

Si la présente tactique continue plus longtemps, non seulement elle apportera la ruine économique de ces milliers de petits détaillants, mais elle aura aussi comme conséquence la disparition des affaires d'un grand nombre de membres de l'Association.

Tout ce que les débitants qui ont été en affaires depuis des années demandent, c'est qu'il leur soit permis de faire face à leurs obligations en vendant leur marchandise avec un profit raisonnable, grâce à l'abolition des tactiques dont ils se plaignent, lesquelles ont d'ailleurs été portées à l'attention de la Commission, plus spécialement dans le rapport si bien préparé par monsieur T. D. Macdonald, directeur des enquêtes et des recherches sous la Loi des Combines, et qui a prouvé hors de tout doute le bien-fondé des présentes plaintes.

Les débitants de tabac demandent que la pratique antérieure de fixer un prix minimum de vente au détail soit reprise et, de plus, tel que suggéré dans un paragraphe précédent, que les débitants de cigarettes soient inclus dans le sous-paragraphe 3 de l'article 498, afin qu'ils puissent conjuguer leurs efforts et obtenir une protection raisonnable, tenant compte du fait qu'ils peuvent tout aussi bien être considérés comme des employés, dédommagés de leurs servi-

ces par un petit profit réalisé sur la marchandise qui leur est fournie par les membres de l'Association soussignée.

En surplus, nous vous demandons une législation spéciale immédiate pour protéger le commerce de cigarettes et des produits de tabac des petits marchands détaillants qui s'en vont à la ruine complète dans les conditions actuelles.

A l'appui, nous pouvons affirmer que les ventes chez les grossistes ont diminué en 1953 d'une moyenne de 4% à 5% sur 1952, et en 1954 de 10% à 12% sur 1953.

Les faillites chez les détaillants de cigarettes sont dans les quatre (4) premiers mois de 1954 supérieures à celles de 1953.

Quoique nous n'ayons pas de chiffre précis, nous affirmons que les ventes de cigarettes par les chaînes de magasins ont en 1953 augmenté de 300% à 400% sur 1952, et jusqu'à date en 1954, elles sont supérieures aux pourcentages ci-haut mentionnés. Vous avez là le portrait exact de la situation du marchand détaillant de cigarettes.

Nous annexons à ce mémoire un extrait de : " Quill & Quire's Convention News: "FAIR TRADE LAWS VITAL TO BUSINESS" par le professeur H.J.Fuller de l'Université de Toronto.

Respectueusement soumis,

L'ASSOCIATION DES DISTRIBUTEURS DE TABAC
EN GROS DE LA PROVINCE DE QUEBEC

Montréal, mai 1954.

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FAIR TRADE LAWS VITAL TO BUSINESS: FULLER

Reasonable bargaining power, legalized by Fair Trade laws, as is being done in the U.S.A. is a step in the direction of that type of co-operation among human beings which is essential in our industrial economy of today, Professor H.J.Fuller of the College of Pharmacy, University of Toronto, pointed out to his attentive capacity audience at today's luncheon.

Professor Fuller drew these conclusions:

RESALE PRICE MAINTENANCE IS COLLECTIVE BARGAINING FOR THE RETAILER. Our government recognizes it for farmers and for labour unions. Our government even buys butter, among other things, to keep the price up so that farmers may have adequate incomes to purchase the materials of our industrial society and at the same time so that labour will be able to sell the things it makes. Without adequate income the farmer and the members of labour unions cannot buy back, one the produce of the other. The government even considers it necessary and just to guarantee an adequate return to capital invested in public utilities by determining the rates.

The retailers of Canada, do not ask the government to buy surplus bottles of ink, or fountain pens, or stationnery. They only ask that they be allowed the same rights of collective bargaining demanded and approved for other segments of our economy. They must have a JUST PRICE for the things they sell to enable them and their employees to live by the same standards as the standards of the farmer and the union member.

(The ninth Census of Distribution, Canada 1951, Dominion Bureau of Statistics, showed that there were 131,360 working proprietors and 603,331 paid employees, a total of 734,691, in the Retail Trade in Canada). They ask that there be not two sets of rules, one for farmers and unions, and a different one for retailers and wholesalers.

Permissive Resale Price Maintenance, legalized in nearly fifteen civilized countries of the West, should be legalized in Canada and the stigma of criminal removed. We do not ask for an end to competition. We ask only for a JUST PRICE for our services and the right to bargain collectively for that price as others do. Resale Price Maintenance is the obverse of cut-throat competition. It is not intended to circumscribe competition. Competition for price is only one of the characteristics of the classical notion of capitalism. Competition has taken on other forms than price, namely competition in RESEARCH and competition in SERVICES. Anyone making an inferior or obsolete product can't sell it no matter how low the price. It is technological innovation such as television and jet planes that have been the stimulus to our economy and not price competition in producing bread and potatoes. We ask only that those whose standard of living is no higher than the slums and those who would cut prices in order that they may later exploit, be prevented from pulling down the price structure and hence the standard of living for all.

We ask that a JUST PRICE be determined in a democratic fashion by people and not by the blind fate of obsolete economic laws which mean economic death to many in a weak bargaining position. We wouldn't think of treating pneumonia with the limited

medical knowledge of 1775 but many still insist on treating certain economic problems with the limited economic knowledge of 1775. Competition for price may have been essential and may still be in a society in which there is not enough to eat but we in an industrial society are not striving for bread but for jam on the bread. We ask that equal opportunity for jam be given to all.

Given the right to bargain for a just price, CO-OPERATION in the production and distribution of the best that modern research and technology can devise will raise the standard of living of all the people of this great nation.

EXTRACT FROM: "QUILL & QUIRE'S CONVENTION NEWS". May 18-1954.

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Me FAVREAU: c.r.

D Est-ce que vous avez d'autres commentaires à faire pour le moment en plus de ce qu'il y a dans votre mémoire ou des représentants des deux (2) associations désirent-ils ajouter autre chose avant que l'interrogatoire ait lieu ?

Monsieur DUHAMEL:

Non, Monsieur le Commissaire.

Me PAUL GERIN-LAJOIE:

D Monsieur Duhamel, la Commission a entendu plusieurs exposés de la situation apparemment difficile à laquelle doivent faire face de nombreux détaillants de tabac au pays. D'une façon générale, tous ceux qui se sont présentés devant la Commission ont tendance à blâmer la pratique de la vente des cigarettes

à prix réduits dans les magasins à chaînes, dans le domaine de l'épicerie pour expliquer cette situation. Cependant, la Commission doit se demander s'il n'y a pas d'autres causes possibles et c'est simplement dans cet esprit que je vous demande si vous ne croyez pas si la cause possible, pas seulement exclusive, de la situation présente ne serait pas le fait qu'il y aurait trop de détaillants de produits de tabacs et qui, absolument, ne tiennent que du tabac et des bonbons ?

R Je ne crois pas qu'il y en ait trop.

D Est-ce que ce n'est pas possible qu'en réduisant le nombre de ces détaillants de tabac et de bonbons, ceux qui ne vendent pas autre chose que cela, on puisse réduire le coût de manutention des cigarettes au détail ?

R Je ne crois pas que cela puisse affecter le coût même si la réduction était possible dans une proportion de X, cela ne pourrait pas être suffisamment considérable pour influencer sur le coût de la manutention.

D On envisage le cas assez nombreux de personnes qui tiennent un petit magasin de tabac. Est-ce qu'on ne peut pas envisager, selon vous, d'après votre expérience, que ces personnes auraient avantage à tenir autre chose que des cigarettes et pourraient tenir leurs commerces probablement à meilleur compte, avec un profit meilleur par dollar de vente ?

R Là, vous ne demandez si on suggère de changer un petit peu l'aspect économique de notre pays. Je n'ai pas assez d'expérience en économie pour vous dire qu'un marchand de tabac pour-

rait peut-être, par exemple, s'occuper de la vente d'accessoires électriques parce que là, peut-être dans cette branche du commerce, vous avez des plaintes qu'il y en a déjà trop de marchands dans le commerce. Alors, quelle manière ou quelle ligne de marchandise suggériez-vous pour augmenter leurs ventes ?

D Je comprends votre hésitation à répondre, je vous comprends très bien, je vous demande simplement si vous aviez une opinion à ce sujet-là.

Me FAVREAU, c.r.

Vous avez demandé à monsieur Duhamel s'il connaît la proportion de ceux des marchands dont le gros des ventes consiste à vendre des cigarettes et du tabac parmi les 27,000 débiteurs dont il a parlé et dont parle son mémoire ?

Monsieur DUHAMEL :

Non, je ne suis pas au courant.

Me FAVREAU, c.r.

D Pensez-vous que c'est la majorité ou la minorité ?

R La majorité des 27,000 débiteurs vendent surtout de la cigarette et du tabac.

D Vous dites qu'il y a 27,000 débiteurs et que dans ce nombre 65% de leurs ventes consisteraient en tabac et confection, environ 65%. Est-ce que vous pensez que c'est la majorité

ou la minorité de ces 27,000 détaillants dont parle votre mémoire dont les ventes dans le tabac est 65% des produits qu'ils vendent ?

R C'est la majorité.

D Est-ce que je peux vous demander une autre question, est-ce la grande majorité ou environ 50% ?

Monsieur LADOUCEUR:

Je calcule que c'est la grande majorité et personnellement les ventes de tabac et de cigarettes est de 71% de notre commerce.

Me GERIN-LAJOIE:

D A propos de changements dans l'organisation de notre économie, est-ce que vous ne croyez pas que c'est la libre concurrence qui depuis toujours ou disons depuis cinquante (50) ans permet le fonctionnement, les méthodes de ventes et de distribution de produits et que sans cette concurrence on ne favoriserait pas un développement de méthodes plus économiques ?

R C'est cela qui est votre question ?

D Croyez-vous qu'en contrôlant les prix cela ne nuirait pas au développement des méthodes plus économiques pour la distribution des produits ?

R Je ne le crois pas.

D Est-ce que vous croyez que des mesures de fixation devraient être générales ou croyez-vous que la politique de fixation

des prix devrait s'appliquer à tous les produits ou seulement les cigarettes ?

R Je crois, d'ailleurs, je vais n'en tenir au domaine des cigarettes connaissant très peu les autres lignes et pour ne pas dire que je ne connais pas du tout. En autant que nous sommes concernés à aller jusqu'au moment où cette législation-là est venue en effet, tout allait bien. Depuis ce temps-là, tout va mal; tout ce qu'on fait, c'est que nous constatons que cela va mal. Si cela allait bien, vous le sauriez. Je ne peux pas dire que la fixation des prix était mauvaise. Si cette fixation des prix a été mal, c'est peut-être pour le fonctionnement de d'autres lignes mais pas dans le domaine de la cigarette car là je maintiens que la fixation des prix était une bonne chose.

D Il y a un autre aspect que la Commission doit prendre en considération. Vous dites que le changement de loi a produit un malaise dans ce commerce mais est-ce que ce malaise chez le commerçant n'a pas eu une compensation ou n'a pas été un bienfait pour le consommateur ?

R Si c'est votre question, je comprendrais mal l'économie d'un pays qui sacrifierait sur le profit légitime d'un marchand pour tâcher de réduire le coût de la vie. Il me semble que chercher de midi à quatorze heures de spéculer sur le fait que des gens vont travailler, vont investir une fortune pour réduire le coût de la vie des autres. Je trouve que cela n'a pas de sens. Voulez-vous dire que si le marchand

Me FAVREAU, c.r.

Ce n'est pas une suggestion, c'est une question que Me Lajoie pose.

- R Ne réponds, je ne peux pas concevoir ça. Vous mentionniez tout à l'heure une chose et je répondrai que s'il y a du développement dans l'industrie à cause de la libre entreprise et de la concurrence, c'est que les compagnies qui ont pu ainsi se développer, cela a été dû au profit que ces compagnies ont pu faire. Si une compagnie ne fait pas de profit, elle ne peut pas se développer.
- D Si un commerçant peut vendre avec un profit moindre que l'autre et gagne sa vie quand même, est-ce que vous ne trouvez pas que c'est une bonne chose de s'en tenir à la libre entreprise ?
- R Cela peut être une bonne chose dans certains cas.
- D Si vous avez la fixation des prix, est-ce que cela n'empêcherait pas cette concurrence qui est l'âme de l'entreprise libre ?
- R Il y a un point de saturation dans les deux sens où vous avez des ventes trop chères et là où vous avez des ventes trop bon marché.
- D Dans un régime de libre entreprise, est-ce que cela ne doit pas être en vertu de la loi de l'offre et de la demande ?
- R Non, parce que dans un sens où la demande dépasse l'offre,

L'Etat a jugé qu'il était à propos de protéger le consommateur par des plafonds de prix et une législation à cet effet et ici, dans le cas qui nous concerne, l'offre dépasse la demande mais là on ne fait pas l'inverse; l'Etat trouve que c'est sage de ne pas légiférer dans un tel cas.

D Maintenant, je vais vous poser quelques questions portant sur les termes de votre mémoire. L'Association que vous représentez ou les deux (2) Associations représentent des grossistes et des distributeurs de cigarettes et autres produits de tabac. Est-ce que d'abord vos Associations sont des associations légalement constituées ou des associations simplement spontanées sans constitution civile ?

R Voici, nous faisons un travail pour l'incorporation des deux associations; nous avons une élection annuelle.

D Depuis quelques années, du moins ?

R Depuis 1932 ou 1933.

D Dans les deux associations ?

R Oui.

D Avez-vous une liste de membres ?

R Oui.

D Est-ce que vous payez une contribution pour être membre ?

R Oui, nous payons une contribution.

D Parmi ces membres qui font partie de vos associations, est-ce que vous vendez que des cigarettes et des produits du tabac ou d'autres produits également ?

R D'autres produits aussi.

D Est-ce que la vente de cigarettes et de tabac est la majorité de ce que vous vendez ?

R Oui, le tabac forme le plus gros montant des ventes et ensuite

vous avez les confiseries. Habituellement, le distributeur de tabac en gros tâche de répondre à tous les besoins du restaurateur pour les divers produits tels que du papier, les sacs, du chocolat, des confiseries et puis des produits de tabac et autres lignes qui se rattachent au restaurateur.

D Avez-vous une idée de la valeur, de la part du commerce du tabac dans tout cela, du pourcentage de la valeur du tabac comparé aux autres lignes ?

Monsieur LADOUCEUR:

Les ventes consistent en 71% de tabac, 24% de confiseries et 5% de divers.

Monsieur DUHAMEL:

R C'est à peu près la réponse que je donnerais, la moyenne.
Me FAVREAU, c.r.

D Est-ce que tous vos membres se limitent à distribuer aux détaillants simplement le genre de marchandises que vous revendez ou s'il y en a qui sont intéressés à vendre d'autres lignes ?

Monsieur LADOUCEUR:

Il y a les magazines qu'on ne vend pas.

Me FAVREAU, c.r.

D Vous ne vendez pas seulement aux restaurateurs ?

Monsieur DUHAMEL:

Oui, et aussi aux garages et aux marchands généraux, enfin...

Monsieur LADOUCEUR:

On vend tout ce qu'il faut dans un petit restaurant.

Me FAVREAU, c.r.

C'est pour cela que je demandais tout à l'heure si vous croyez

que la majorité des 27,000 détaillants faisaient du tabac et des cigarettes le gros de leurs affaires; je vous demande si votre proportion de 71% et de 29% peut également s'appliquer au commerce fait par les 27,000 détaillants.

Monsieur DUHAMEL:

A l'extérieur de Montréal, les problèmes sont peut-être différents parce que là vous allez à la campagne et vous avez beaucoup de marchands qui vont vendre des magazines, des journaux et qui vendent du tabac. Vous avez de ces marchands dans toutes les parties de la province et vous demandez quelle est la proportion en nombre où le commerce est surtout le tabac ?

D Vous avez dit qu'il y avait au moins une majorité, quelque-
tait son importance, dont le commerce de tabac est le plus
important, dont la vente de tabac est la principale occupa-
tion, c'est bien cela que vous avez dit ?

R Oui, c'est cela.

Me GERIN-LAJOIE:

D A la première page, au bas, vous parlez de la concurrence
déloyale dont souffrent les débiteurs de tabac de la part
des commerçants qui ne sont pas des détaillants réguliers
de cigarettes. Qu'est-ce que vous entendez par concurrence
déloyale ?

R Voici, quand un compétiteur vend moins cher qu'on peut
acheter, là, c'est une concurrence déloyale.

D Si celui-là achète moins cher que vous pouvez acheter, ce
n'est pas peut-être déloyal ?

R Ma réponse est que lorsqu'un concurrent vend meilleur marché

que je peux acheter, c'est une concurrence déloyale.

D Pas nécessairement, ce n'est pas de la concurrence déloyale de la part de l'autre détaillant ?

R En autant que je vends un produit et si mon compétiteur peut le vendre à meilleur marché et fait encore un profit, là c'est de la concurrence légitime, mais s'il vend son produit à meilleur marché que moi je peux l'acheter, je dis que c'est une concurrence déloyale.

D Je vous ai demandé cela simplement pour éclaircir ce que vous entendiez par cette expression ?

R Je comprends, s'il vend à meilleur marché que moi, que je puis acheter moi-même, je dis que c'est déloyal.

D Quand vous parlez des lourdes pertes financières aux membres de votre Association, voulez-vous dire des profits moindres que les années précédentes ou voulez-vous dire autre chose ?

R Je veux dire autre chose.

D Voulez-vous l'expliquer à la Commission, s'il-vous-plaît ?

R Quand les gens ne sont pas capables de payer leurs comptes, les grossistes perdent de la marchandise et ils perdent également la taxe qui a été payée. Le grossiste doit perdre cette taxe parce qu'en somme, la taxe fédérale est incluse dans le prix de la marchandise payée aux manufacturiers et alors, le grossiste non seulement doit perdre la marchandise mais il perd également la taxe, laquelle il ne peut pas réclamer et il se trouve, par le fait même, à faire une perte nette.

D Pouvez-vous dire dans quel ordre, dans quel degré; pouvez-vous nous citer des cas concrets ?

- R Je ne suis pas préparé à donner des chiffres ou pourcentages, je ne les possède pas, mais si d'autres les possèdent
- D Vous ne pouvez pas donner de précisions ?
- R Pour tâcher d'analyser la situation, je vais me mettre un petit peu vis-à-vis un "tobacconniste," ce qui est le cas pour un grand nombre. Je vais vous parler de mon cas. Je fais un sacrifice financier de venir ici aujourd'hui représenter mes confrères car j'ai une petite organisation, je fais partie d'une petite organisation dont ma part est de 25%. Je représente donc 25% de l'actif de mon organisation. Alors, vous pouvez comprendre que je ne suis pas à même d'avoir, comme dans bien des cas, où il s'agit de grosses organisations, de grosses industries, des chiffres et renseignements au bout du doigt. Il faut tâcher de le faire au meilleur de ma connaissance, de donner des chiffres approximatifs et ces chiffres ont été compilés à brève échéance. On fait cela, ces démarches ici, pour le bien des membres de l'Association. Nous avons fait ici des démarches dans l'intérêt de nos confrères des Associations et cela a été un sacrifice pour tous ceux qui sont ici aujourd'hui. Il y a bien des questions auxquelles je ne peux pas répondre et ce n'est pas de la mauvaise volonté, c'est qu'on n'a pas les renseignements voulus.
- D Les pertes dont vous parlez, ce sont des comptes qui ne sont pas payés ?
- R Oui.
- D Vous n'avez pas d'idée tout de même, pour la dernière année, pour 1953, durant l'exercice financier de cette année-là ?

R Pour l'exercice financier de 1953, je ne le sais pas, seulement les derniers mois et je ne sais pas s'il y a d'autres membres qui ont des rapports des pertes financières à produire.

Monsieur LADOUCEUR:

Il y a un petit recensement qui a été fait parmi les grossistes au sujet des faillites en 1953.

Me FAVREAU, c.r.

Vous parlez de clients des deux Associations réunies ?

R Non, les pertes subies par les grossistes, les détaillants qui ont failli. Voici, j'en ai pour trois (3) grossistes, en 1953, couvrant la période de 12 mois, il y a eu \$4,159.93 de faillites.

Me PAUL GERIN-LAJOIE:

D Pour un grossiste ?

R Oui, un grossiste pour 12 mois.

D Pour un chiffre d'affaires de combien, avez-vous une idée?

R Cela, par exemple, je ne l'ai pas demandé, mais pour 1954, le même grossiste couvrant la période de 4 mois, qui est un tiers de l'année, il y a eu pour \$5,245.77, ce qui fait une ~~augmentation~~ de 25% ou à peu près dans l'espace de quatre mois.

Me FAVREAU, c.r.

Vous avez pris le total de 4 mois et multipliez par trois ?

R Non, le total pour 12 mois, en 1953 a été de \$4,159.93.

D Et en 1954, alors, pour 4 mois ?

Monsieur DUHAMEL:

Pour quatre (4) mois seulement, il y a eu pour \$5,245.77.

Me FAVREAU, c.r.

Cela fait quasiment 400% ?

Monsieur LADOUCEUR:

Si vous faites la proportion, cela représente à peu près \$15,000.00 au lieu de \$4,000. J'ai ici un deuxième gros-siste, en 1953, il a eu pour \$832.55 de faillites; en 1954, \$2,272.72, pour quatre (4) mois , aussi comparé au 12 mois. Pour un troisième, vous avez en 1953, pour la période de 12 mois, \$251.51 et en 1954, pour quatre mois, \$993.49.

Me PAUL GERIN-LAJOIE:

Pendant que vous donnez ces explications, monsieur Ladouceur, avez-vous raison de croire que les faillites ne se produisent pas plus pendant les quatre (4) premiers mois de l'année dans ce genre de commerce que pendant les huit autres mois ?

Monsieur LADOUCEUR:

Non, les faillites dont je parle, sont à la cause de manque de fonds; ce ne sont pas des "estimés" .

Me FAVREAU, c.r.

Vous ne savez pas combien de faillites cela couvre, cela ?

Monsieur LADOUCEUR:

Non, je ne pourrais pas dire.

Me GERIN-LAJOIE:

D Vous ne savez pas non plus si ces faillites sont dans des commerces où on faisait affaires seulement dans le tabac et les bonbons ?

R Monsieur LADOUCEUR:

C'est assez difficile à faire la dénomination, mais ce sont des clients à qui on vend des produits de tabac et de restaurant, c'est à peu près le principal commerce.

Me GERIN-LAJOIE:

Sauf dans certains magasins comme des restaurants, vous vendez, par exemple, à ces magasins-là des cigarettes qui ne constituent pas ou qui ne constituent qu'une partie probablement très minime de leur commerce alors qu'au magasin de coin cela formerait une grande partie de leur commerce ?

R Dans notre cas, c'est difficile de l'établir et puis dans les magasins à chaînes d'épicerie, nous ne vendons pas mais nous vendons dans d'autres commerces où, comme vous dites, le tabac n'est pas la marchandise principale.

Me GERIN-LAJOIE (à monsieur Duhamel):

Parmi les renseignements obtenus du Directeur des Enquêtes et des Recherches, il y a celui-ci, quand la Colombie Britannique les grossistes ont passé une partie de leur marché sans profit aux détaillants; croyez-vous que cela est possible dans la province de Québec ?

R Je ne crois pas que cela soit possible nulle part au pays.

D Comment expliquez-vous que cela s'est fait en Colombie-Britannique ?

R C'est ce qui a été très mal ce qui est arrivé en Colombie-Britannique. D'après les renseignements que je possède, ce qui est arrivé en Colombie-Britannique, c'est que des grossistes n'ont pas simplement fait faillite, ils ont simplement

donné leur commerce. Ce sont les rapports que j'ai eus que quatre grossistes ne se sont même pas donnés la peine de faire faillite, dans certains cas, ils ont simplement donné leur commerce pour rien à cause de la compétition que vous mentionnez là.

D Entre les grossistes ?

R Oui, c'est juste.

D A Toronto, il a été suggéré que des coopératives, des genres de coopératives soient créés pour faire face à la concurrence qui s'était produite spécialement dans le commerce du tabac; croyez-vous que cela serait un remède chez vous ?

R Je crois que c'est là une impossibilité, parce que le rôle que nous jouons dans le commerce est un rôle de distribution. Que ce soit une coopérative ou un autre genre de commerce, nous jouons le même rôle là encore et je dois ajouter que ces coopératives doivent engager des capitaux élevés et ils doivent avoir des employés et qu'ils ont les mêmes frais de distribution et qu'ils ont le même coût au marché que nous avons nous-mêmes. Je crois même qu'il serait encore plus dispendieux de vendre de cette façon parce que nous divisons nos dépenses de revente par le nombre d'articles que nous vendons, alors que chaque manufacturier, dans ce cas, serait obligé d'aller directement chez le marchand lui vendre et lui livrer la marchandise et il ne peut pas augmenter le prix des marchandises. Le problème en est un de distribution et il ne serait pas économique la distribution soit faite par les manufacturiers.

D L'expérience de cette coopérative est qu'on peut de cette

façon diminuer le coût de distribution ?

R Je crois que cette expérience est une exception qui ne peut être générale. C'est comme je viens de le dire, c'est comme la coupe des prix, c'est une perte car il ne servirait à rien de vendre pour \$1,000.00 de marchandises pour ne réaliser qu'un dollar de profit, car là, toute entreprise perdrait de l'argent.

D Vous mentionnez à la page 3, au bas de la page, dans votre mémoire : " En utilisant la vente des cigarettes à prix coupés comme appât pour la clientèle, les magasins à succursales et autres ont réalisé un fort volume d'affaires, au détriment de leurs compétiteurs". Vous n'avez pas de chiffres sur cette question ?

R Oui, j'ai des données sur cette question. Voici, en 1952, les chaînes de magasins vendaient 1.8%, c'est-à-dire c'est approximatif, ce ne sont pas des chiffres officiels de toutes les compagnies, mais je crois qu'on arrive à peu près au même.

D Voulez-vous dire où vous prenez ces chiffres-là ?

R Non, je ne peux pas le dire, mais si un manufacturier veut le dire

D Ce sont des chiffres d'un manufacturier ?

R Oui, je crois que nous avons combiné quelques marques et nous en sommes arrivés à peu près aux mêmes chiffres avec décimales près.

D Ces chiffres seraient respectivement des chiffres fournis par un manufacturier ?

R Oui, et d'après ces chiffres, la vente de cigarettes, en 1952,

dans les magasins à chaînes, elle aurait été de 1.8% suivant le total des cigarettes vendues par ces chaînes, c'est-à-dire en 1952, la chaîne de magasins vendait 1.8% des ventes diverses. En 1953, ce chiffre a été porté à 3.1% et en 1954, les cigarettes ont formé un total de 3.7% de la vente totale et de la façon, à l'allure qu'on y va, on y vendrait un pourcentage de 12% de la vente totale, ce serait le pourcentage que les chaînes de magasins vendent aux Etats-Unis. C'est la tendance actuellement, par les chaînes de magasins au Canada, qui actuellement, prennent les mêmes moyens pour vendre des cigarettes dans leurs magasins.

D C'est bien à cette situation que vous réferez au bas de la page 3 lorsque vous dites : " Les magasins à succursales et autres ont réalisé un fort volume d'affaires au détriment de leurs compétiteurs". Vous ne parlez pas du fort volume en général ?

R Oui, c'est possible aussi.

D Sur l'augmentation du chiffre d'affaires des magasins à chaînes, vous n'avez pas obtenu de chiffres des magasins Steinberg, Atlantic & Pacific, etc., vous n'avez pas de données sur le chiffre de leurs affaires dans la vente des cigarettes ?

R Non, je n'ai pas de données.

Me FAVREAU, c.r.

D Leurs ventes de cigarettes ont effectivement augmentées ?

R Oui.

D Mais vous ne pouvez pas dire si c'est dans la même proportion, que le chiffre d'affaires de ces magasins-là, dans la vente des cigarettes, a augmenté ?

R Non, mais je crois que j'ai vu en quelque part en des recherches faites, une question à cet effet-là, mais je ne la possède pas.

Me GERIN-LAJOIE:

D Ce que vous affirmez, si je peux comprendre le premier paragraphe complet de la page 4

Monsieur LADOUCEUR:

J'ai un rapport d'un magasin, un rapport confidentiel. En 1953, les ventes aux chaînes de magasins, comparativement à 1952, sont au-delà de 300%.

Me GERIN-LAJOIE:

Dans les cigarettes ?

Monsieur LADOUCEUR:

Oui, dans les cigarettes seulement.

Me GERIN-LAJOIE:

Au bas de la page 3, vous dites : " En utilisant la vente des cigarettes à prix coupés comme appât pour la clientèle, les magasins à succursales et autres ont réalisé un fort volume d'affaires, au détriment de leurs compétiteurs. Si les magasins à succursales avaient été seuls à couper le prix des cigarettes, cela aurait été un avantage permanent, mais, ..." Quelle est votre interprétation, monsieur Ladouceur ? Vous dites que ce fort volume d'affaires a été fait au détriment de vos compétiteurs.

Monsieur LADOUCEUR:

C'est bien cela.

Me GERIN-LAJOIE:

C'est pour le domaine des cigarettes ou si c'est pour toutes les ventes en général ?

Monsieur DUHAMEL:

Non, nous nous en sommes tenus au volume dans le domaine de la cigarette, et c'est pourquoi j'ai cité, j'ai donné des chiffres totaux d'après ce que nous connaissons et ce domaine est le seule domaine que nous connaissons, le domaine de la cigarette.

Me GERIN-LAJOIE:

A la fin du même paragraphe, pouvez-vous nous dire quelle est la proportion des 27,000 débitants que vous mentionnez dans votre mémoire qui dépendent de la vente des cigarettes pour vivre ?

Monsieur DUHAMEL:

Monsieur Ladouceur pourrait vous répondre à cette question.

Me GERIN-LAJOIE (à monsieur Ladouceur:

Pouvez-vous nous dire quelle est la proportion des 27,000 débitants qui sont mentionnés dans le mémoire et qui dépendent des cigarettes pour vivre, de la vente des cigarettes ?

Monsieur LADOUCEUR:

On a dit que la majorité d'eux étaient des vendeurs de tabac, et la majorité est encore plus forte pour ce qui est du tabac parce que le magasin de tabac, en général, laisse ses portes ouvertes jusqu'à neuf heures ou neuf heures et demie (9.30) le soir et alors un consommateur peut y aller chercher un paquet de cigarettes ou un "coke", tandis que dans les chaînes

à magasins, ces magasins sont fermés à heures fixes et beaucoup plus à bonne heure.

Me GERIN-LAJOLIE:

Est-ce que la pharmacie n'est pas ouverte jusqu'à onze (11) heures le soir ?

R Oui, mais le pharmacien ne donne pas de crédit comme dans le petit magasin.

Me GERIN-LAJOLIE:

Etes-vous bien sûr que le pharmacien ne donne pas de crédit?

Monsieur LADOUCEUR:

Possible, voici, en général, il peut y avoir certains cas particuliers où les clients seraient très connus, mais pour arriver avec un petit marchand qui a un livre où est marqué ce que vous achetez à chaque jour, comme vous le voyez souvent chez le détaillant, je n'ai jamais vu un tel état de choses chez le pharmacien.

Me GERIN-LAJOLIE:

Maintenant, au bas de la page 4, vous semblez prendre l'intérêt du Trésor Provincial mais est-ce que vous ne croyez pas que l'augmentation des ventes de cigarettes a dû se manifester dans les revenus de la Province de Québec, tel qu'il l'a été admis par monsieur Corfinkel après-midi; cette augmentation a entraîné une augmentation des revenus dans le Trésor Provincial de Québec ?

R Si je comprends que cela a entraîné ? Je ne peux pas dire s'il se vend plus de cigarettes.

D Alors, est-ce que vous tenez toujours à cette information; si je comprends bien, ce que vous voulez dire lorsque vous dites que le Trésor Provincial se trouve à souffrir de la situation qui se manifeste depuis un an ou un peu plus

Monsieur DUHAMEL:

C'est-à-dire qu'il ait à souffrir, je ne suis pas prêt à dire cela, parce que je n'ai pas les chiffres du Trésorier Provincial, mais j'imagine que s'il s'est produit plus de faillites, cela n'a rien ajouté au Trésor Provincial. Il est indéniable que plus il se vend de cigarettes, plus le Gouvernement Provincial et le Gouvernement Fédéral récoltent des taxes, parce que, comme vous le savez, la taxe sur le tabac est très élevée. Mais, je dirais que ces deux (2) gouvernements ou plutôt le Gouvernement de la province de Québec a certainement perdu quelque chose à cause des faillites et si l'état actuel n'était pas survenu, je suis certain qu'il y aurait eu moins de faillite et moins de perte pour tous ceux concernés.

D Vous ne pouvez pas dire si la vente des cigarettes, le volume augmenté, n'est pas attribuable en partie à ces prix coupés ?

R Je n'ai pas de chiffres à cet effet-là, mais je ne le crois pas que l'individu va fumer plus de cigarettes parce que le prix est moins élevé. Si je prends un groupe de mes amis et le public en général, comme preuve à l'appui, ce ne serait pas parce que vous payez les cigarettes 33 cents au lieu de 37 cents que vous allez en fumer plus. Je ne crois pas que celui qui paie meilleur marché en fume plus à cause du prix,

car il n'est pas pour se rendre malade à fumer simplement parce qu'il va les payer meilleur marché, à moins d'un patriotisme exagéré en voulant gonfler les fonds de nos gouvernements. Je ne crois pas que ce soit là une raison.

D Vous souvenez-vous quand la taxe fédérale était plus élevée, qu'elle l'est actuellement, sur le tabac et que l'argument qui a été amené contre la taxe, c'est que cela allait diminuer la vente des marchands de tabac et parce fait, le Trésor recevrait moins d'argent ?

R Je me souviens qu'il y a eu des représentations à cet effet faites à Ottawa et, comme je dis aujourd'hui, il y a un point de saturation et là la vente de cigarettes tombe.

D Vous parlez de faillites de débiteurs et de diminution de débiteurs, ne croyez-vous pas que le nombre de débiteurs de tabac dans la province de Québec n'est pas trop élevé pour les exigences générales de la population ?

R Je ne le crois pas.

D Maintenant, à la page 6, il y a quelque chose d'assez original sur lequel vous pourriez certainement donner quelques explications dans la proposition que vous formulez. Est-ce qu'en définitive, cela ne reviendrait pas à permettre des coalitions ou monopoles entre les détaillants de tabac en les incluant dans les mêmes exceptions ou les mêmes associations, tels que les syndicats et les unions ouvrières et là vous citez l'article 498 de la Loi des Coalitions ?

R Vous me demandez si ce ne serait pas ... Vous me demandez mon opinion si avec cela ça ne créerait pas un monopole ?

D Oui ?

R Non, je crois qu'avec la loi existante on est à créer des monopoles, en éliminant l'indépendant, il reste alors seulement le gros et vous créez un monopole.

D De cette façon vous permettez aux détaillants de se liguer pour fixer un prix entre eux ?

R Non, nous suggérons, comme cela existait avant la section 498, qu'il y ait un pourcentage de fixé, un profit raisonnable, pour que les détaillants soient intéressés à vendre les produits. Voyez-vous, nous sommes intéressés à ce que le marchand, le détaillant fasse un bénéfice raisonnable et il faut également que le grossiste en fasse un lui aussi.

D Prétendez-vous que cela serait bon pour tout le commerce en général ou si vous faites une exception pour le commerce du tabac ? Dites-vous cela pour tous les domaines ?

R Probablement que ce serait bon pour tous les commerces, seulement je ne peux pas prendre la part du manufacturier, ce n'est pas mon rôle. Je ne vois pas que cela puisse faire du tort de laisser un profit très légitime à chacun. La compétition existe encore sûrement et dans les prix c'est seulement c'est seulement un aspect de la compétition parce que la compétition ne devrait pas être basée seulement sur les prix.

D Dans ce domaine, est-ce qu'il y a autre chose que les prix ?

R Il y a la qualité du service, l'accommodation.

D Quel service ?

R Les services que rendent les marchands.

D Voulez-vous dire les heures d'ouverture et de fermeture ?

R Oui, et la variété des marchandises comme des bonbons, des magazines, des journaux que vous allez trouver dans les magasins de ces petits marchands-là et la vente de ces articles n'est pas toujours payante; le marchand, souvent, tient ces marchandises pour accommoder la population, pour le bienfait de ses clients.

D Le profit raisonnable, croyez-vous qu'il peut être fixé avec justice justement pour donner aux détaillants absolument les mêmes niveaux de profit, par exemple trois cents par paquet de cigarettes, pour donner un montant ? Ne croyez-vous que par une juste concurrence, une meilleure administration que ceci peut permettre à un détaillant de se contenter de deux cents de profit alors qu'un autre détaillant veut trois cents ?

R Voulez-vous dire que celui qui est capable de vendre à un prix moindre que les autres et qui serait satisfait de ce prix-là ?

D Est-ce que vous laisseriez à un organisme gouvernemental déterminer cette façon de baisser les prix ?

R Je crois que si vous considérez le coût de la vie actuelle, dans l'approvisionnement et dans toutes ses phases, vous observerez que le profit que le marchand de tabac a sur ses produits est excessivement minime. Je ne crois pas connaître un seul produit au monde où le profit est plus bas que cela; je ne crois pas qu'il y ait là un argument de profit car, comme vous le savez, il est très minime.

D Vous avez référé tout à l'heure au contrôle des prix fixé pendant la guerre, est-ce qu'on peut dire que la fixation de

la marge de profit et des prix à cette époque était une bonne chose. Nous savons que c'était relativement facile parce qu'on connaissait les profits d'avant la guerre, mais si on doit employer des contrôles gouvernementaux indéfiniment, croyez-vous que cela serait une bonne politique ?

R Je n'ai pas suggéré un contrôle gouvernemental.

D Alors, qu'est-ce que vous suggérez ?

R Je crois que nous avons fait mention ici, alors que nous parlons des manufacturiers. Dans ce mémoire, nous avons parlé des producteurs et comme je l'ai dit, je désirerais attirer votre attention là-dessus, que cela devrait être "manufacturiers" : "rétablissent la pratique antérieure par laquelle les cigarettes pouvaient seulement être vendues par les débitants de tabac, avec une marge de profit qui leur permettait de rencontrer leurs obligations et gagner leur vie."

D A un moment donné, j'ai parlé d'organisme gouvernemental et là vous dites que non ?

R Non, c'est absolument tel que c'est là.

D Si vous permettez indéfiniment aux manufacturiers de fixer la marge de profit, est-ce que vous ne croyez pas possible qu'à la longue le public n'ait plus l'idée des excès de profit ou l'insuffisance de profit ? Si un consommateur paie trente-cinq cents (.35) pour un paquet de cigarettes, il ne se fera jamais à l'idée qu'il pourrait l'avoir à trente-quatre (34) cents. Ne considérez-vous pas qu'il y aurait lieu de favoriser de meilleurs prix par l'amélioration de la distribution ?

R Comment pouvez-vous favoriser une amélioration de la distri-

bution avec des profits moindres, si vous permettez la coupe
C des prix.

D Est-ce qu'il n'est pas dans votre expérience, et il y a une
chose aussi que tout le monde connaît, c'est que dans cer-
taines lignes ils ont bien amélioré les conditions de ventes
au détail au cours de longues périodes de temps ?

R Pas en ne faisant pas de profit, il est impossible de le
faire. J'admets que dans certaines lignes, il y a eu amé-
lioration, mais ces gens-là ne donnent pas leur profit.
Le coût de la vie est beaucoup plus élevé maintenant qu'en
1939, malgré toutes les améliorations dans le commerce.

D Je ne parle pas des profits ou de faire des profits, je parle
de l'amélioration des conditions de distribution, et vous
admettez que depuis cinquante (50) ans, les conditions du
commerce au détail ont changé ?

R Oui, elles ont beaucoup changé.

D Est-ce que si vous baissez les prix, vous ne suivez pas une
certaine amélioration dans les relations entre détaillants
et distributeurs ? S'il y avait amélioration entre ces deux
là, est-ce que cela n'aurait pas pour effet de diminuer les
prix ? Je ne parle pas de prix gagné, je parle d'une meilleure
façon de distribution ?

R Je ne crois pas que changer la méthode de distribution chan-
gerait grand'chose au profit du détaillant. Dans ce cas, si
le manufacturier devait faire la distribution, cela augmente
nécessairement ses frais et cette augmentation serait subie

par le détaillant et par la suite, par le consommateur.

Dans le cas des distributeurs actuels, chaque distributeur en passant chez le marchand lui demande de mettre telle ou telle marchandise en évidence afin qu'elle puisse mieux se vendre. Le marchand le fait si la marge de profit est suffisante, mais si elle ne l'est pas, il est découragé et ne cherche pas à vendre ce produit.

D Le fait que dans le tabac les prix sont uniformes dans la plupart des cas, parce fait il n'y a plus de concurrence ?

R Vous suggérez qu'il y ait entente entre les manufacturiers pour leur prix de revente, qu'il soit toujours le même, je ne suis pas au courant.

D Et en fait, étant donné l'égalité de qualité à peu près, les cigarettes se vendent aux mêmes prix. Alors, si le manufacturier peut lui-même livrer la marchandise et peut maintenir son prix au détaillant, est-ce que cela n'empêche pas cette concurrence qui pourrait permettre, à longue échéance, de diminuer le coût des ventes au détail ?

R Non, je me base sur le fait qu'avant que cette affaire existe, tout marchait bien, et depuis que cela existe, tout marche mal et la conclusion est vite donnée; tout marche mal en quelque part.

D Vous suggérez l'idée que la Commission devrait être changée, c'est-à-dire la loi, s'il n'y a pas d'autre façon de régler le problème ?

R Oui, c'est très bien et j'en reste là. Je me base sur les constatations. Auparavant, les manufacturiers accordaient un

profit légitime qui n'était certainement pas trop exagéré et aujourd'hui, ils ne peuvent plus le faire et alors, vous avez le cahot dans le détail.

Me FAVREAU, c.r.

- D Est-ce que vous êtes bien sûr que cette situation provoquée par la réduction des prix de la part des magasins à chaînes va nécessairement continuée, en d'autres termes, si ce n'est pas payant pour un magasin à chaîne, par contre cela augmente le montant global des ventes des autres produits, les ventes des cigarettes pourront être réduites ?
- R Je ne crois pas que cela soit payant, mais seulement combien de temps pourront-ils être engagés dans cette compétition comme celle-là, je ne le sais pas. Mais, il y a une chose que l'on sait, c'est que les marchands indépendants ne pourront pas indéfiniment endurer le coup.
- D Dans le rapport du Directeur des Recherches, à la page 259, on constate que les ventes globales des magasins à chaînes, une organisation assez importante en Ontario, en prenant pour l'indice 100, les ventes de janvier 1952, on constate que les ventes pour 1952, avant la coupure des prix a dû être 117 des ventes globales. L'indice de mars 1952 aurait été de 124. En 1953, pour les mois de janvier, février, mars et avril, la vente des cigarettes de ce même magasin ont passé de \$7,930.00 en janvier à \$17,094.00 en avril, donc ce qui donne un indice d'environ 225 pour mars et 216 pour avril. Malgré ceci, en 1953, pour le même mois

de ventes globales, elles se sont maintenues à un pourcentage près par rapport au mois de janvier. C'est-à-dire, je trouve l'indice à 123 en mars 1952 et si je prends l'indice de janvier qui est égal à 100, celui-ci est porté à 123. Et par la suite, je trouve 116, par rapport à 117 en avril 1952, c'est peut-être des constations que lorsque le magasin à chaîne devait faire une exception là et que les magasins ont peut-être réalisé qu'il n'y avait aucune proportion dans la vente des cigarettes même faite dans le but d'attirer les clients et l'augmentation des ventes totales?

R Il y a toujours ce danger de guerre de prix qui n'est pas la chose la plus intelligente dans le commerce et il y a des considérations pour lesquelles des gens relativement intelligents sont satisfaits, malgré qu'un tel état de choses ne donne aucun avantage.

D Il se peut qu'au début on ait cru que cela améliorerait le service aux clients; cela aurait peut-être été fait dans ce but, pour justifier ce point de vue ?

R Non., je ne peux pas admettre cela, j'ai eu des informations qui vont plus loin que cela et il y a des membres de notre association qui ont également eu des informations qui révèlent que les magasins à chaînes vendent les cigarettes à meilleur marché pour attirer la clientèle.

D Dans votre opinion, le but des magasins à chaînes n'a pas été seulement d'augmenter les ventes totales ?

R Non, pas d'autre, et je crois que cela a été fait dans ce but-là. Cela n'a peut-être pas eu le résultat désiré, et si on faisait un recensement dans la ville de Montréal parmi les

magasins qui coupent les prix, il y en a qui seraient heureux de revenir à la normale, lorsque la situation sera assurée, qu'on reviendrait à l'ancienne méthode. Mais il faut penser à qui va en souffrir, c'est le petit marchand qui en souffre, c'est lui qui est pris dans cette guerre de prix-là, la situation est déplorable, mais elle reste là.

ET LE DEROBANT NE DIT RIEN DE PLUS.

Maurice Guay,
Sténographe officiel.
Montréal.

Delegation from: BENSON & HEDGES (CANADA)
LIMITED.

Represented by: John Hagnes,
Vice-President.

Alexander Maclean,
Secretary-Treasurer

THE CHAIRMAN: The next presentation for today is to be on behalf of Henson & Hedges Company.

MR. MACLEAN: Mr. Chairman and members of the Commission, our firm is represented by Mr. John Hagnes, our Vice-President, and by me, Alexander Maclean, Secretary-treasurer of the Company. Do you wish me to proceed by reading the letter?

THE CHAIRMAN: You were here when the other briefs were presented, so if you follow pretty much the same practice.

MR. MACLEAN: This letter is addressed to Mr. C. Rhodes Smith, Chairman, Restrictive Trade Practices Commission, Room 451, Justice Building, Ottawa, Ontario.

"Dear Sir:

"We are very glad of the opportunity afforded us to appear before your Commission to present our views on the question of loss-leader selling as it relates to the tobacco industry. First of all, we would like to congratulate the Director of Investigation and Research on the excellent job he has done of collecting

facts as contained in the booklet you have made available to us. The detailed information contained therein should be most useful to the Commission in its study of the highly controversial subject of loss-leader selling.

We understand that you are more interested in facts than opinions, but as manufacturers we are not in a position to quote detailed facts and figures or to refer to particular cases, nevertheless we hope that we may be of some small assistance to the inquiry by giving our opinions based on our own experiences.

"Our firm is one of the smaller manufacturers in the tobacco industry and while we manufacture all three types of tobacco products (viz. cigars, cigarettes and smoking tobaccos), cigars account for the major part of our sales and the cigarette side of our business is relatively small. None of our cigarette brands has been considered of enough importance to find a place in the list of standard brands found on page 205 of the Director's survey of cigarettes, although the list contains the names of seventeen other brands.

"As far as cigars and smoking tobacco are concerned, to the best of our knowledge, there has been little or no price

cutting and most retail sales are still being made at the manufacturers' suggested selling prices. Perhaps the reason for this relatively nappy state of affairs is that cigar prices, to use the economist's term, have always tended to be 'customary'. A ten cent cigar is a ten cent cigar and if sold at any other price will not sell as well. A five percent reduction in price to $9\frac{1}{2}$ cents for example would repel buyers rather than attract them."

THE CHAIRMAN: what would a 55% cut do?

MR. MACLEAN: I am coming to that: there are 5¢ cigars.

THE CHAIRMAN: A change in price would not have much effect -- $9\frac{1}{2}$ ¢ -- it is rather difficult if you are buying one cigar to get change, but suppose the retail price was 5¢, would that increase the sale of those cigars, or would it have no effect?

MR. MACLEAN: I think it would increase the sale.

THE CHAIRMAN: That is what I would think.

MR. MACLEAN: Because it would widen the market.

"This truth has been amply borne out during the past ten years. Rising costs of production and heavier excise taxes

forced up the price of the pre-war five cent cigar in successive stages, first to 6 cents, then to $7\frac{1}{2}$ cents, next to 3 for 25 cents, then to 2 for 19 cents and in 1949 to 10 cents. For a short time some brands (none of our's) were priced at 11 cents but since 1952 all major brands have been selling at 10 cents. In that particular range, sales have picked up considerably since this convenient price has again become general."

THE CHAIRMAN: You mean most brands of cigars are now selling at the retail price of 10¢?

MR. MACLEAN: In that range, the cigars now are on a level of 5, 10, 15 and 20¢.

THE CHAIRMAN: And 2 for 35¢?

MR. MACLEAN: Yes.

THE CHAIRMAN: And 50¢ each.

MR. MACLEAN: "On the other hand it may be that because cigars do not have a wide general appeal they do not lend themselves to cut price tactics of merchandising and are therefore not suitable for use as loss-leaders." In any event we have heard no complaints of cigars being sold at cut-rate prices.

"Cigarettes on the other hand are different and the standard pack of

20 has not sold at a 'customary' price since before the war when 20 for 25 cents was the rule. In those days there was no price cutting problem but since the price left the even-money level and since the abolition of price maintenance, the shaving of a penny or two from the regular price has no doubt proved an attraction to some consumers. Cigarettes, unlike cigars, also have a wide general use and therefore are ideal as loss-leaders."

THE CHAIRMAN: Are you meaning to infer by that paragraph that for years prior to the abolition of price maintenance the price-cutting practice was prevalent?

MR. MACLEAN: It wasn't.

THE CHAIRMAN: Are you saying it was?

MR. MACLEAN: No.

THE CHAIRMAN: Because your paragraph deals with the days before the war, and you say the price has not been customary since before the war when the price was 20/25¢, and since the price left the even-money level. Well, it left the even-money level during the war.

MR. MACLEAN: Yes.

THE CHAIRMAN: Do you mean between fairly early in the war and the abolition of price maintenance in 1951 there was price-cutting on a wide scale?

MR. MACLEAN: No, I mean the two factors involved: we used to have an even-money price -- 25¢ --and we also had price maintenance, and the two factors prevented price-cutting.

THE CHAIRMAN: well, your reference to the even-money level was not intended to mean that the price-cutting became popular at that time, but not until the abolition of resale price maintenance?

MR. MACLEAN: On, no.

"The margin on cigarettes is small and when a retailer or wholesaler is forced by his competitors to sell below the regular price, he is in real financial danger, and this is especially true of the average tobacconist who, according to page 209 of the Director's report, depends on cigars, cigarettes and smoking tobacco for 67.5% of his sales.

These points however can be better developed by the retailers' and wholesalers' organizations than by any manufacturer who naturally lacks the facts and figures to demonstrate the exact effect of price cutting on retailers and wholesalers. Suffice it to say that we have heard that real hardship exists among the smaller dealers since price cutting has become prevalent in the cigarette business.

"Price maintenance worked very well

in the tobacco business until it was prohibited. It made for stability without interfering with competition. The Royal Commission on Price Spreads in 1935 did not seem to be opposed to price maintenance but they did condemn loss-leader selling. On page 269 of the Director's report we find the following:'

"We condemn the practice of loss-leaders as unfair, promoting wasteful competition and seriously affecting the income of certain classes of primary producers, but in seeking a solution for the problem through legislative remedies we are confronted with certain difficulties. These difficulties are complicated by our recognition of the necessity and propriety in certain circumstances of price reductions. Such reductions for instance must be permitted when a retailer discontinues handling a particular line of merchandise, or when he clears a slow-moving stock. There is also the necessity of cutting prices to clear out-of-style goods or surpluses of perishable commodities. These are legitimate reasons for reducing prices, but they complicate the definition of

what constitutes a loss-leader and make difficult its simple prohibition.'

'One of the reasons that price maintenance worked so well in the tobacco industry is that none of the difficulties foreseen by the Royal Commission was a factor.

'Slow-moving stock, out-of-style goods or surpluses of perishable commodities' are not a problem of retailers of tobacco products for the following reasons:

1. Nearly all goods carry the brand name of some manufacturer who is more interested even than the retailer in seeing that his merchandise reaches the consumer in first class condition.
2. The manufacturer is thus placed in the position of having to replace or take back any of his brand-named goods which for any reason become unsaleable, lest they be sold and cause damage to the reputation of the brand.
3. In effect the manufacturer of tobacco products guarantees the ultimate sale of his goods so there is no question of the retailer having a problem with 'slow-moving stock, out-of-style goods or surpluses of perishable

commodities.'

"It will be seen therefore that none of the problems foreseen by the Price Spread Commission as complicating the 'simple prohibition of loss-leader selling' apply to the tobacco industry. The 'simple prohibition of loss-leader selling' was accomplished by the price maintenance policies of the manufacturers.

"There is no doubt that the barring of price maintenance has caused havoc in the cigarette field and hardship to small dealers and we would like to see a return to the stability of former years. This can best be achieved, in our opinion, by exempting the tobacco industry from the effect of the recent amendment to section 34 of the Combines Investigation Act and thus allowing a return of the system whereby each manufacturer, when he manufactured a product on which he put his name; on which he staked his reputation; and on which he frequently spent a fortune in advertising; was free to see that his product was sold to the consumer at the price he had planned - not any higher and not any lower.

"We hope that we may have made in this short submission, a contribution to the study of loss-leader selling and

that our comments may be helpful to your Commission in its study of such a highly controversial and difficult subject.

"Respectfully submitted."

THE CHAIRMAN: Do you wish to add anything to the brief at this time before any questions are asked?

MR. MACLEAN: No, sir.

THE CHAIRMAN: Mr. Hughes, do you wish to make any comments?

MR. HUGHES: I have nothing particular to say apart from what is covered in the brief, but if there is any question anybody would like to ask, I am only too glad to try and answer it.

THE CHAIRMAN: I think there may be a few questions, but we thought you might want to add something in addition to what is in the brief.

MR. HUGHES: I might briefly state that business I have been in the tobacco^{business} for 52 years, and during that time I have seen price maintenance in operation and it always worked very successfully and seemed to make everybody in the trade happy, and it is only since this recent law was passed that we heard of any disturbance of any kind.

In my opinion, and the question has been asked during the day, "On what you base your margin of profit or your mark-up", and that is something that is very difficult to answer. There

are so many things that enter into it that it is something that is different for every product and every person involved. I do know from our own experience, if you were to ask me how we set our price I could not tell you; it has just come about by custom over the years. I do believe in the tobacco industry that nobody has got too much profit, including the manufacturers, and I don't think any of them can afford to give anything away if he wants to stay in business. One of the big worries in the business today is that they are afraid of who to sell them to, because they don't know whether they are going to get paid. I know of wholesalers who are worried stiff they have got so much money on the books which they cannot get in, and that is not a healthy condition. I think we might talk of the working masses, who form the majority of the population, and they are certainly out to see that they get well paid for what they are doing. Why should they prevent the little storekeeper from getting his legitimate profit? It is a question of fair play.

I don't think there is anything else I can add. I would like to see a return to the old days when everybody was happy, when we were getting a legitimate profit and nothing exorbitant.

MR. GERIN-LAJOIE: I have only two questions for Mr. Maclean or Mr. Huges. Would you mind mentioning to the Commission, for the

purpose of the record, the brands of cigarettes you manufacture?

MR. MACLEAN: We manufacture Benson & Hedges Virginia Rounds; Henle, Cigarettes, Benson & Hedges Parliament Cigarettes, and Benson & Hedges Brown and White Cigarettes.

MR. GERIN-LAJOIE: Do they sell exactly at the same price as other brands, or approximately the same price?

MR. MACLEAN: Virginia Rounds and Henleys and Parliament all sell at the same price as what we call standard brands. Havana sells at 5¢ a package higher. While I am on my feet I would like to say, when I was listening to Mr. Gorfinkel's evidence, one thing I did not hear him say was that the chain stores only handle the main sellers. The tobacconists handle almost everything that is made by tobacco manufacturers. If you wanted to buy a package of our Havana Brown Cigarettes you would not be able to buy them in the chain stores. You would have to go to the tobacco shops, or Hyman's or United Cigar Stores; and that is one service they give that the others do not. They handle tobacco products outside of the main brands.

MR. FAVREA: They would not sell Pall Mall?

MR. MACLEAN: We don't make those.

MR. FAVREAU: What was the name you mentioned?

MR. MACLEAN: Parliament.

MR. FAVREAU: Parliaments, that is what I had in mind.

MR. GERIN-LAJOIE: You don't mean, I suppose, that most of the 27,000 outlets mentioned in Mr. Gorfinkel's report all have those special brands of cigarettes, or other tobacco products?

MR. MACLEAN: Mr. Hughes likes to think they have, but I am afraid they don't all have them.

MR. GERIN-LAJOIE: On page 2 of your brief, your letter, you mentioned that the margin on cigarettes is small. Well, as Mr. Hughes mentioned, it may be difficult to determine to what extent it is small or not, but are you able to compare the margin of profit on cigarettes in Canada with the United States?

MR. MACLEAN: No.

MR. GERIN-LAJOIE: Are you aware of the margin of profit in the United States?

MR. MACLEAN: No.

MR. GERIN-LAJOIE: At the end of page 2 do you really mean that stability in prices is compatible with competition?

MR. MACLEAN: Yes. If I might enlarge on that, our opinion is this: That simply because one cigarette may sell at the same price as another it does not mean to say they are not competing. There are other forms of competition than price competition. There is very definitely the competition of quality and packaging and merchandising factors such as that, but perhaps you

are interested more in the price angle than the quality angle. Well, I can say this, that in 1940 our firm saw an opportunity of merchandising a cigarette at a lower price than what cigarettes were selling at in general at the time, and we did not hesitate to put a cigarette on the market to sell at a lower price. That is why we say that price maintenance does not prevent competition.

THE CHAIRMAN: What happened at that time?

MR. MACLEAN: We sold cigarettes.

THE CHAIRMAN: Were they a brand you had previously had on sale?

MR. MACLEAN: Yes, it was a brand that was revived; it was Henle.

THE CHAIRMAN: Was it a brand that had been sold at standard price?

MR. MACLEAN: No, I don't think so.

THE CHAIRMAN: When you put it on at a lower price, I was wondering whether you were able to say that that stepped up the sales?

MR. MACLEAN: It had been dormant for a number of years.

MR. FAVREAU: But you could succeed in reviving it through that device?

MR. MACLEAN: We did.

MR. GERIN-LAJOIE: Would you not feel that price reductions by retailers might encourage new methods of production of cigarettes?

MR. MACLEAN: Not having been a retailer I cannot answer that question.

THE CHAIRMAN: This Henley cigarette again; you stated that in 1940 you saw an opportunity of putting it on sale at a lower price than the standard cigarettes were selling at, but I think you said that it is now selling at the same price?

MR. MACLEAN: Yes.

THE CHAIRMAN: Was it and is it the same quality cigarette as the others?

MR. MACLEAN: The main saving in cost that justified the selling was that we cut a shorter cigarette.

THE CHAIRMAN: Was it also thicker?

MR. MACLEAN: No, it was 68 millimeters against 70, so there was a slight saving in the amount of tobacco. The cigarette at that time was packaged in the pouch package, which is the American style of packing. It is a lot less expensive than the cardboard package, and we thought that these two savings, and being able to see our way to perhaps get into the cigarette business which is where we would like to be, we took that opportunity to sell a cigarette, and we did sell lots of cigarettes.

THE CHAIRMAN: But you adopted the other style of packaging and increased the size of the cigarette and then put the price on the same level as the others?

MR. MACLEAN: Yes.

THE CHAIRMAN: You say it is cheaper to make a package of the American type -- a soft

type of package: There are some Canadian cigarettes in soft packets, and the price is the same. As far as I recall, that is the situation today, and they do not seem to have followed up your practice of 1940 when you were increasing your sales.

MR. GERIN-LAJOIE: Just increasing profits.

MR. HUGHES: I think you must take into consideration the equipment that is necessary to produce a cigarette. In 1940 we were not in a position to pack a cigarette otherwise than in that pouch package, and we knew it is not the type of packing that is most popular with the public. They prefer the hard type, although in the United States it is pouch packing, but it is because they have no choice because practically all the cigarettes are packed that way. Later on we got in packaging equipment for the hard package and we made the change, but there were other factors that entered into it too besides that. While it was reasonably feasible to manufacture and merchandise a cigarette at that cheaper price at that time, as the years went on it became more and more difficult, and at that time tobacco was grown in Ontario and there was an abundant supply that we bought at that time, anyway, at 25¢ a pound, whereas today you pay 75¢ or \$1.00. That was when we went into the present style of packing for the same brand, and it is practically the same quality, as the original cheaper one, but the

conditions are not the same.

THE CHAIRMAN: Would you say in 1954, at this time, it would not be cheaper to produce a pouch package of cigarettes?

MR. HUGHES: A little bit cheaper; probably a cent a package to the consumer.

THE CHAIRMAN: N body seems to be using that as a means of increasing their business; they produce them but they don't use that saving.

MR. HUGHES: I have just come back from a two-weeks trip through Ontario and there are a number of, not the popular brands, but some new brands which have come out in the soft package which the dealers are putting to the front of the counter and trying to sell them in competition with the chain stores; trying to sell them in preference to the regular brands.

THE CHAIRMAN: No manufacturer has put one of the standard brands in a pouch pack and reduced the price?

MR. HUGHES: No, I don't see how the present cigarettes on the market, how they can make them to sell at that price; I don't know what is in them.

THE CHAIRMAN: Well, perhaps they could make them sell at 32¢ if the cost is 1¢ less to produce.

MR. HUGHES: I could tell you this, that a good quality cigarette, packed in a package, the manufacturer's profit today is, I would say,

not any more than about half of what it was, 15 or 20 years ago, in spite of the fact that your dollar is only worth 50¢

MR. FAVREAU: No; if presently your package of cigarettes would cost the manufacturer 1¢ less, you would not lose by passing on that saving to the customer.

MR. HUGHES: No, I said at the consumer level; it would probably be a little less at the manufacturer's level.

MR. GERIN-LAJOIE: Referring to the top of page 4, you refer to the fortune spent in advertising; part of this fortune could be passed on to the public?

MR. HUGHES: I don't think you could go against natural policies. Advertising is an accepted medium of merchandising throughout the world, and if you are going to stop advertising, you might as well give your business to your competitor; it is not practical.

MR. GERIN-LAJOIE: Of course, I mentioned only part of that fortune; it is a question of degree, of course.

MR. HUGHES: The amount of the fortune you would spend on advertising depends on how many you sell. What might be a fortune to us might be peanuts to our big competitors.

THE CHAIRMAN: You cannot reduce your appropriation for advertising unless others do the same?

MR. HUGHES: I could not reduce it 1¢, because we don't spend 1¢. We know we are licked.

THE CHAIRMAN: Then you don't sell as many as some of the others?

MR. HUGHES: No. There is one point about which Mr. Gorfinkel was questioned, and that was the service the retailer gives apart from the chain store. I think there is an awful lot of service you get out of a retailer tobacconist which you do not get out of a chain store. You cannot buy a newspaper or a pipe or matches -- you could buy the big box of matches. You cannot drop in and have a sandwich and a cup of coffee. You cannot get any of that in the chain stores, and besides that we don't sell many cigarettes. Mr. Maclean mentioned the Havana Brown: We sell about 3,000,000 a month, so somebody must like them, and if that person who likes them lets the corner retailer disappear, where is he going to get them? Not at the chain stores, because he won't sell enough. I think the retailer tobacconist does contribute a whole lot for the fact that he is getting a couple of cents extra.

THE CHAIRMAN: Doesn't he also perform another service, such as advising a customer as to the strength and qualities of various brands of tobacco and cigarettes, and cigars, and perhaps assist them in making up their minds as to what they would really like to buy?

MR. HUGHES: Certainly.

THE CHAIRMAN: That has not been mentioned yet.

MR. GORFINKEL: On behalf of the retailers, thank you, sir.

MR. HUGHES: I would tell a customer he is crazy to pay 50¢ for a cigar because it cannot possibly be any better than if he paid 25¢ for a cigar which had been made in Havana by black labour.

MR. FAVREAU: Do I understand that the public, including both the consumer, the retailer and the manufacturer, the small retailer performs a function both in favour of the customer, but at the same time in favour of certain manufacturers who otherwise may not have outlets in chain stores?

MR. HUGHES: I think that is right.

MR. FAVREAU: Wouldn't it be a good reason for manufacturers to render available to retailers prices which might be just as attractive as those made available to chain stores?

MR. HUGHES: I cannot speak for other manufacturers; I can only speak for ourselves and I know that we are not in a position to pass on anything additional for benefits we might get from the storekeeper. We expect all the accommodation or services he renders to be taken care of by him out of the margin of profit we see fit to be able to give him. We would like to give him more, certainly, and also we would like more ourselves, but the situation

is such that there is nothing to pass on to anybody. If the manufacturer is obliged to go round to all these 27,000 stores in the Province of Quebec -- and I guess over Canada there is probably 60,000 or 70,000 -- if the manufacturer himself was to undertake that distribution, do you think he could do it without adding something to the cost? I read some of the evidence in the paper that was taken in Toronto where some co-operative buying concern has asked for the privilege to purchase from the manufacturer. Well, I don't see how that is going to help the situation at all. If you went around the City of Montreal you might be able to pick up 100 or so who could form a co-operative society and be able to buy cigarettes, but they are going to have to undertake some cost for the handling of that. Besides that, what is going to happen to the tens of thousands of others who are not in the co-operative? It is not going to improve conditions; it is going to make it all the harder for the man who wants to buy ten packages of cigarettes because that is all he has got in his till at the present time. There are some small concerns in this city -- they are small but they are earning a living -- who will buy from three or four distributors in the one day, because they have only enough cash to buy about a quarter of a day's supply. How are you going to take care

of that fellow? Are you going to let him and his family starve?

MR. WHITELEY: Do the Benson & Hedges Company have "C" accounts?

MR. MACLEAN: Yes, sir.

MR. WHITELEY: How do you handle those at distributing points?

MR. MACLEAN: We have a factory in Montreal, a warehouse in Toronto and one in Winnipeg and one in Vancouver, and where we think it is advantageous we ship from there; if it is better from Montreal, we ship from there.

MR. WHITELEY: What would be the situation if you operated your cash-and-carry from these warehouses?

MR. MACLEAN: I don't think we would do any business at all.

MR. WHITELEY: Why?

MR. MACLEAN: One thing that we find we are expected to do in the tobacco business, perhaps because we are a national seller, is that we are expected to provide the same services as our big competitors, and if we don't we don't sell. So, we feel we have to maintain warehouses in Vancouver and one in Winnipeg. If we asked them to come and get it and pay cash, nobody would come and get it.

THE CHAIRMAN: Even at a lower price?

MR. HUGHES: It would be a rather difficult problem to come all the way from Edmonton

down to Winnipeg to get 500 or 1,000 cigars.

THE CHAIRMAN: Thank you very much, Mr. Hughes and Mr. Maclean. If that completes all you wish to present to us we will adjourn the hearing until tomorrow afternoon at 2.00 o'clock.

---The hearing adjourned at 5.15 p.m. until 2.00 p.m. tomorrow.

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RESTRICTIVE TRADE PRACTICES COMMISSION

LOSS-LEADER SELLING

TRANSCRIPT OF EVIDENCE

Vol. 0

MONTREAL

JUN 8 1954

RESTRICTIVE TRADE PRACTICES COMMISSION

IN THE MATTER OF

an inquiry

Regarding Loss-Leader Selling

Hearing held (in public) in Hearing Room

No. 2, New Court House Building, Montreal, Tuesday, June 8th, 1954.

PRESENT:

C. Rhodes Smith, Q.C., M.A., LL.B., B.C.L.,
Chairman.
Guy Favreau, Q.C., B.A., LL.B.,
Member.
A. S. Whiteley, B.A., M.A.,
Member.

APPEARANCE:

Mr. Paul Gerin-Lajoie - Counsel for the Commission

REPRESENTATIONS:

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Northern Electric Company Limited	1524
Represented by:	
F. G. Samis, Commercial Manager.	
V. O. Marquez, Marketing Manager	
M. D. Brooks, General Merchandising Manager.	
G. M. Pynn, Appliance Manager.	
The Hartney Company Limited	1598
Represented by:	
Mr. I. S. Isaacs, President.	
Mr. Bernard Isaacs, Vice-President.	
Canadian Wholesale Hardware Association	1636
Represented by:	
Mr. Crowder, Secretary-Manager.	
Mr. N. E. Peveril, Manager of Hardware Division of William Stears.	
Mr. C. Gobeil, General Manager, Lewis Bros., Montreal	
Mr. R. Miller, Director of Purchases, Lever Bros.	
Mr. A. A. Waterhouse, Kaverhill & Co.	
Mr. E. Roy.	
Mr. Hector Prudhomme, A. Prudhomme et fils.	
Mr. A. C. Stevens, Sherbrooke.	

MONTREAL,TUESDAY, JUNE 8th, 1954

Delegation from: NORTHERN ELECTRIC COMPANY
LIMITED.

Represented by: F. G. Samis,
Commercial Manager.

V. O. Marquez,
Marketing Manager.

M. D. Brooks,
General Merchandising
Manager.

G.M. Pynn,
Appliance Manager.

---The hearing commenced at 2.00 p.m.

THE CHAIRMAN: The hearing will come to
order.

The first presentation to be made this
afternoon is on behalf of the Northern Electric
Company Limited, and I understand they are ready
to proceed. In case you are not familiar with
the procedure, the general practice has been
to read the brief and make any comments you
wish to make, or explanations, while you are
reading it, or add anything you wish at the end,
and then any other member of the delegation
who desires to make any comments may do so, and
following that we will have questions and dis-
cussion in order that we understand fully
what is intended to be conveyed by the dele-
gation.

MR. SAMIS: "LOSS-LEADER SELLING"

"BRIEF SUBMITTED TO THE RESTRICTIVE
"TRADE PRACTICES COMMISSION AT
"MONTREAL, ON JUNE 8, 1954, BY
"NORTHERN ELECTRIC COMPANY LIMITED.

"INTRODUCTION

"We have examined carefully the very extensive and excellent Report of Material Collected by the Director of Investigation and Research in connection with Loss-Leader Selling. While this report carefully avoids drawing conclusions or making recommendations, it is our opinion that it contains sufficient evidence to indicate that there are pricing practices which are not in the public interest, as well as those which are in the public interest.

"It is our purpose -

- (1) to demonstrate that pricing practices which are not in the public interest are prevalent in the field of retail selling of electrical appliances in Canada today;
- (2) to show how these pricing practices are harmful to the long-term interests of the public and hence should be curbed;
- (3) to recommend a practical method of curbing pricing practices which are not in the public interest,

without, at the same time, discouraging those pricing practices which are in the public interest.

"Since frequent reference is made to the Director's Report throughout, we will refer to it as such with the understanding that this reference means the Material Collected by the Director of Investigation and Research in connection with Loss-Leader Selling.

"GENERAL.

"In examining the phenomenon of price-cutting, we suggest that all price-cutting is done with a single end in view, namely, to maximize a profit (or to minimize a loss); that there are several kinds of price-cutting which may be employed in attaining that end, some of which are clearly beneficial to the public interest and others which are clearly harmful to the public interest, and further, that it is very often an exceedingly difficult matter to distinguish between the beneficial and the harmful character of any individual price-cut.

In general, there are three kinds of price-cuts which may be broadly categorized as Progressive, Protective and Predatory.

"Progressive Price-Cutting"

"This is the form of price reduction which is the foundation of our high standard of living in a free economy. It results from higher productivity, i.e. increased efficiency in production and/or distribution without interfering with the quality of the product or the factors required to induce high volume; and makes more products available to more people, at the same time increasing profit and ultimately increasing employment. This form of price reduction is beneficial to all concerned and it is one of the dangers of our time that the abolition of resale price maintenance may tend to discourage it.

"Protective Price-Cutting"

"There are two types of protective price-cutting -

- (1) to meet competition;
- (2) to clear merchandise which is perishable or subject to obsolescence.

These types of price-cutting are defensible. They occur only temporarily and irregularly and are necessary either to preserve one's market or to minimize losses resulting from errors in judgment.

"Predatory Price-Cutting"

"There are two types of predatory

price-cutting -

- (1) Price-cuts which simulate efficiencies because the particular retailer indulging in them will contend that they are profitable. However, the apparent efficiencies are not real but false because the retailer fails to perform one or more of the functions which are required to create public acceptance and demand for the product, such functions having been performed by others without whom the parasitic price-cutting retailer could not exist.
- (2) Price-cuts which increase store traffic by advertising brand-name merchandise at obviously low prices to attract customers with the intention of selling higher priced and higher profit merchandise in addition to, or instead of, the advertised merchandise. This is a form of subterfuge which is obviously profitable to those who practice it or they would not continue to do so.

It is our opinion that the Commission, in its investigation of Loss-Leader Selling, is concerned with both of the above forms of predatory price-cutting.

"PREDATORY PRICE-CUTTING IS PREVALENT IN
"THE RETAIL SELLING OF ELECTRICAL APPLIANCES
"IN CANADA TODAY.

"It may be observed from the Director's Report and from other evidence already placed before this Commission that predatory price-cutting of brand-name merchandise is now prevalent at the retail level. At the time of the report of the MacQuarrie Committee on resale price maintenance, this condition was not prevalent as reported by the Committee at that time.

"(Quoted from Page 3, Director's
"Report)"

"As to the Loss-Leader device, the Committee believes that it is a monopolistic practice which does not promote general welfare and therefore considers that it is not compatible with the public interest. However, we do not believe that it presents any immediate danger; extreme forms of price-cutting are not very likely in this period of inflation and relative scarcity."

"We submit herewith, as Appendix A, further evidence of current predatory price-cutting in the form of copies of advertisements, each of which offers brand-name electrical appliances for sale at

prices considerably below the resale prices suggested by the manufacturer.

"while the degree to which predatory price-cutting practices exist at present is greatest in Ontario and British Columbia, and more specifically in Toronto and Vancouver, it is a fact that this form of price-cutting is appearing all over Canada. The wide-spread circulation of Toronto newspapers, which daily carry many advertisements of the type shown, induces a tendency towards the practice in almost every part of the country.

"THESE PREDATORY PRICE-CUTTING PRACTICES
"ARE HARMFUL TO THE LONG-TERM INTERESTS
"OF THE PUBLIC.

"Low retail prices to the consumer are dependent on high volume, as manufacturing and distributing efficiencies can be effected only under conditions of high volume.

Experience has shown that in the electrical appliance field the following ingredients of the distributing procedure, among others, are essential to the development and maintenance of a high and sustained volume of business -

- (1) The distributive procedure must provide the field service necessary to keep the appliances in good

repair and the consumer satisfied.

- (2) The distributive procedure must provide the consumer with the opportunity to compare the features and qualities of competitive appliances.
- (3) The distributive procedure must include facilities for creative selling, i.e. for demonstrating to the consumer the benefits and advantages to be derived from new features on established products. Thus, since the end of World War II, these procedures have introduced and established such desirable characteristics among refrigerators as automatic defrosting, units which provide 25% more storage space while occupying the identical kitchen space, and many others. These advantages are real, not imaginary, improvements and provide benefits to the consumer, but these benefits would not automatically find a large volume market unless the distributive procedure included some considerable effort to bring them ..."

There is a correction there; I leave out the three words, "and their benefits".

"... to the attention of the consumer.

They must be displayed, described and demonstrated by the retailer who can do this effectively and economically.

- (4) The distributive procedure must also be depended upon to do the major job of displaying, describing, demonstrating and selling the benefits of new appliances, such as electric clothes dryers, garbage disposal units, room air conditioners, and others as yet undeveloped. None of these appliances are yet being produced in large manufacturing runs in Canada. They will never reach the levels of real manufacturing efficiency if the distributive procedure in this country does not discharge the responsibility of developing a mass market for them.

"It is characteristic of the predatory price-cutting retailer that he fails to perform one or more of the essential functions of the distributive procedure and relies upon others to perform them for him.

"If we examine the advertising which is employed by retailers indulging in predatory price-cutting (see Exhibit A), we can see that all these advertisements are recognizable by a number of typical characteristics -

- (1) The names of one or more well-known and reputable brands or manufacturers are prominently displayed, giving the impression (not always borne out in fact) that all the advertised merchandise is produced by those manufacturers.
- (2) A dominant feature of this class of advertisement is that the price of the appliance is in each case considerably below what the consumer would normally expect to pay and is almost invariably compared in the advertisement with some other much higher price, usually one which purports to be the suggested list price of the manufacturer.
- (3) There is an almost complete absence of copy describing those features of the appliance which normally require creative selling.
- (4) As a general rule, no merchandise is advertised by these price-cutting retailers which does not already fall into the category of appliances for which public acceptance has been created by reputable distributors to a high degree.
- (5) There is frequent misrepresentation in the advertising. Appliances

listed under a general brand-name heading often on closer scrutiny are seen to be of some less well-known brand; list prices are shown as 'formerly prices at --' and are ..."

Here there is a correction and it should read,

"...are often inflated."

THE CHAIRMAN: You are cutting down the emphasis a little bit?

MR. SAMIS: Yes.

"It is apparent that the retailer using this form of predatory price-cutting is trading on the selling job done by other retailers and by the manufacturer through which the acceptance of the brand and the desirability of the features of the appliances have already been established.

"In effect, all that the predatory price-cutter says is - 'provided you have already accepted the necessity of having this appliance in your home and the desirability of this particular brand and model, I can sell it to you for less.' what he does not say is that he could not do this if there were not other more ethical retailers to carry out the functions which he deliberately omits and with whose normal prices his may be

compared.

"The predatory price-cutter is in fact a parasite, completely analogous to the parasite in the biological sense. He depends for his existence on the continued well-being of his hosts, the more conventional retailers. Unfortunately, like all parasites, he will, if unchecked, completely destroy his hosts and when this condition is reached he also sinks into an unprofitable existence, volume is reduced, distributing costs rise, manufacturing costs cannot be maintained at efficient levels and the consumer is worse off than before.

"RECOMMENDATIONS

"Since the abolition of resale price maintenance on January 1st, 1953, and the advent of a buyers' market for the first time in a dozen years, predatory price-cutting has become a very real and serious problem in the retailing of electrical appliances. It seems reasonable to assume that the ideal objective sought by this Commission is to find a set of circumstances or workable regulations within which the consumer would continue to reap the advantage from progressive price reductions resulting from genuine efficiencies in production and distribution and at the same time be protected from the false advan-

tages which are hidden in predatory price reductions, which, in the long run, are costly and inefficient.

"It is appropriate to remark here that, in general, predatory price-cutting cannot flourish where resale price maintenance by the manufacturer is permitted, because of the retaliatory action which can be used by the manufacturer against retailers who price-cut his products in this manner.

"It therefore appears that the Commission has a choice of three alternatives to recommend -

A - To let matters stand as they are with resale price maintenance prohibited, and expose the consumer, the retailer and the manufacturer to the harmful effects of predatory price-cutting,

or

B - To enact legislation which will, in effect, prohibit predatory price-cutting and at the same time prohibit resale price maintenance,

or

C - To rescind the prohibition of resale price maintenance so that the predatory price-cutter can be curbed within the trade itself.

"Alternative A - Let matters stand as they
Are.

"The current prevalence of predatory price-cutting and the alarming rate at which it is spreading; the very real harm which has already followed in its wake in the form of an accelerating rate of failures among the smaller retailers and the concentration of appliance retailing into fewer and fewer monopolistic channels, even without taking into account the long term, more serious dangers described earlier in this brief, suggest that the public interest is being exposed to a risk which is real, which is considerable and which will be costly to the economy.

"We do not believe it to be in the public interest for the Commission to disregard the situation and by its disregard permit these dangerous practices to continue.

"Alternative B - Legislate against predatory price-cutting.

"The second alternative is fraught with practical problems - problems which exist because of the very real difficulties involved in classifying specific cases of price-cutting and in enacting workable legislation to curb the practice where it is undesirable.

"Because the question of 'intent' is involved when a price is 'cut', it is often difficult to distinguish between predatory and protective price-cutting and even more difficult to distinguish between the two forms of predatory price-cutting. A single price-cut may be stimulated by a combination of motives, some of which could be commendable, some defensible and some reprehensible.

"Furthermore, one of the cardinal economic lessons learned from price controls during world war II was that economic controls breed more economic controls. Control of prices was necessarily followed by control of production, which was necessarily followed by control of distribution.

"The Canadian Government dropped controls with alacrity after the cessation of hostilities and allowed the normal checks and balances of supply and demand to come into play.

"We do not recommend that the problem be solved by the addition of further controls.

"Alternative C - Rescind the anti-resale price maintenance legislation.

Under normal competitive conditions such as existed prior to January 1st, 1953, the high standard of living in Canada

was due in large measure to the determination of manufacturers, distributors and dealers to increase the profitability of their separate operations by placing a wider variety of products, with more desirable and attractive features, at lower prices, within the buying reach of an increasing number of people.

"If the Government, in good faith, felt that there was some concealed danger from which the public was to be protected, when resale price maintenance was prohibited to manufacturers, we submit, in equal good faith, that the cure is worse than the disease and recommend strongly that the existing legislation prohibiting resale price maintenance be rescinded."

THE CHAIRMAN: Do you wish to add anything to the brief at this stage?

MR. SAMIS: No sir, I have nothing to add to it.

THE CHAIRMAN: Does any other member of the delegation wish to add anything at this time, or make any comments at all?

MR. GERIN-LAJOIE: I have a few questions for Mr. Samis.

THE CHAIRMAN: Mr. Lajoie is counsel for the inquiry, appointed by the Minister as counsel in this inquiry, and he will ask questions of

everybody who presents a brief, whatever their point of view may be. It is not a cross-examination; we are trying to get at the full meaning of what you are saying in the brief.

MR. GERIN-LAJOLIE: The law does not say that counsel acts for the Commission or for anyone else, but only says that the Minister of Justice may appoint counsel to help in the inquiry, so we can take it it is only to look after the public interest.

At the outset of your brief you exposed that one of your purposes is to recommend a practical method of curbing pricing practices which are not in the public interests without, at the same time, discouraging those pricing practices which are in the public interest. Could you explain now your conclusion which calls for the former practice of price maintenance would permit the pricing practices which are in the public interest if a manufacturer is allowed to impose retail prices to retailers?

MR. SAMIS: The answer to that question lies in the history of our manufacturing in Canada. Up until the time resale price maintenance was prohibited, that is precisely what happened.

MR. GERIN-LAJOLIE: Do you believe that there can really be competition among retailers and that lowering prices would be possible with the price maintenance legislation we had before?

You expose on page 2 of your brief that there is a progressive type of price-cutting?

MR. SAMIS: Yes.

MR. GERIN-LAJOIE: How could there be any price-cutting if we have price maintenance by the manufacturer?

MR. MARQUEZ: I would like to quote from the Director's Report, page 308, in which a quotation is given from the Lloyd Jacobs Report, and that quotation reads:

"There is, therefore, in our view, all the more obligation on the manufacturer to see that he exercises his power in a proper manner. That this is commercially possible is shown by the fact that some manufacturers of nationally advertised branded goods of wide popularity (the very people who stand to lose most from the use of loss-leaders) have in fact traded successfully for years on a basis of recommended retail prices and have taken active steps to maintain these prices only on the comparatively rare occasions when severe price-cutting threatened a reduction in the demand for their goods."

In other words, I suggest that the Lloyd Jacobs Commission considers it is possible for progressive price reductions to take place even under a general policy of resale price maintenance.

I would like to quote one other thing: I have some figures here comparing the price of a refrigerator in 1948 and 1954. It happens to be a 7 cubic foot refrigerator which in 1948 took up a space of 31 inches wide in a kitchen; it listed at \$372.00. The equivalent refrigerator, that is a refrigerator which provides the same storage space although now occupying less space in the same kitchen, 7 cubic feet, but with what we consider to be improvements in it which did not exist in 1948, now lists at \$299.00. That is the suggested manufacturer's price.

MR. WHITELEY: Have you got the comparative manufacturer's selling prices for the same years?

MR. MARQUEZ: These prices I have given are in both cases the manufacturer's list price.

MR. WHITELEY: To the consumer?

MR. MARQUEZ: Yes.

MR. WHITELEY: But have you the manufacturer's net selling price for the same period?

MR. MARQUEZ: To the dealer, no I haven't.

MR. WHITELEY: You haven't got that?

MR. MARQUEZ: I don't think that that is relevant.

MR. WHITELEY: Well, I am asking.

MR. MARQUEZ: I would like to introduce one other point.

THE CHAIRMAN: It might be relevant to us.

MR. MARQUEZ: I haven't got that here. I would like to introduce one other figure, and that

is the 1954 list price of a 9 cubic foot refrigerator, which is a substantially larger refrigerator, and again with what we consider to be improved features, and that is listed at \$359.00, and again I haven't got the suggested price to the dealer.

MR. GERIN-LAJOLIE: At page 2 of your brief, regarding progressive price-cutting, you mention efficiency in production and distribution: would you agree with the figures found many places showing that about 50% of the retail price of a particular commodity is production and the distribution side of it involves about 50% of the retailing cost or price?

MR. SAMIS: No, I would not agree with that. I don't think you can name any particular percentage on an overall basis. You must consider the individual goods and the circumstances.

MR. MARQUEZ: I would like to observe one thing and that is it is common today to criticize distributor prices as high, and it seems to me it is often overlooked that if good distribution produces an increasing volume for the manufacturer, that since manufacturing methods are generally more subject to improvement, because they are manufacturing processes, than distributive procedures which are generally done by people, that when volume increases as a result of good distribution, the effect in terms of production is more noticeable in the manufacturing field, and the net result is what you appear to have as

a larger portion of distributing costs to manufacturing costs, but surely the overall result is the important thing. To quote figures, if an article consisted of \$500.00 manufacturing costs and \$100.00 distributing costs, and sold at \$600.00, with good distribution, if he brought down the manufacturing costs to \$150.00, then you have a relationship of \$100.00 to \$150.00, and you would say, "My God, look at the enormous cost of distribution as compared to manufacture."

THE CHAIRMAN: That would not happen just in that way.

MR. SAMIS: I quoted exaggerated figures, admittedly.

THE CHAIRMAN: Well, if it costs \$500.00 to manufacture and \$100.00 to sell in the first stages, and subsequently it only costs \$150.00 to manufacture wouldn't it be almost certain that the \$100.00 for selling costs would also be too high?

Mr. MARQUEZ: It would, because almost invariably, because of our traditional practice, distributive costs manifest themselves in one way or another as a proportion of overall costs, so the distributive costs tend to go down. There are two points I wish to make, and one is because manufacturing processes are mechanical processes, or processes which are more susceptible to mechanization, the difference between the manufacturing costs of an article

produced in small quantity and that of a product produced in large quantity is considerable. While such distributor processes are processes which have to be carried out by people, the possibility of economy as a result of volume is not inherently, in it to an equivalent degree, and the result is that as you reduce manufacturing costs because of high volume and reduce distributing costs proportionately to a smaller degree, then distribution tends to appear in a higher relationship to manufacturing than it otherwise would.

MR. GERIN-LAJOIE: Without giving any opinion as the cost of distribution is too high or not, I am just asking if you would have any idea of the relative importance of production costs in your field and distribution costs on the retail price of an article?

MR. MARQUEZ: All I can tell you is this, that the tax department, for excise tax purposes, suggests that the manufacturer's cost to a distributor is the best dealer price less 10%. The Northern Electric Company are distributors of electrical appliances, and we do not manufacture electrical appliances other than radios, but we are distributors, national distributors of electrical appliances and, as such, vitally interested in this question.

MR. GERIN-LAJOIE: But as manufacturers of radios what would be the relative importance of the manufacturing costs and distributing

costs?

MR. MARQUEZ: I think I would have to agree with Mr. Samis, that it would depend to some extent on the stage of introduction of a particular feature; for example, if a new type of radio is introduced, like a clock radio, then for some period of time distributive costs might form a higher percentage of the overall picture. I would hesitate to name a flat percentage.

MR. WHITELEY: You are, in effect, buying your products, I presume, at the closest manufacturing price you can get by an outside manufacturer?

MR. MARQUEZ: That is right, sir. You mean where we act as a distributor, that is right.

MR. WHITELEY: Other than radios.

MR. MARQUEZ: Yes.

MR. WHITELEY: So from the point of view of your company there is a measure between what you pay for these goods you do not manufacture and what the consumer pays; that is all marketing -- it is all distribution?

MR. MARQUEZ: In our case we form a link in distributive procedure.

MR. WHITELEY: Yes; in other words, I assume the manufacturer from whom you buy these goods is not doing any marketing activity on your behalf?

MR. MARQUEZ: That is right.

MR. WHITELEY: So that the entire spread

between what you pay for these goods and what the consumer pays is marketing?

MR. MARQUEZ: That is right, our costs and part of the dealer's costs.

MR. WHITELEY: I am coming to that. Can you give us the lower and upper range between the goods on which the marketing range is smallest and the goods on which the marketing range is largest -- how wide a range is that?

MR. MARQUEZ: I have a letter dated September 10th, 1953, which we wrote to Mr. MacDonald in reply to some questions, and we gave him there a number of examples of dealer discounts; these happen to be refrigerators.

MR. WHITELEY: That is not my point. I am after the entire difference between what you pay for the manufacture of these goods made by somebody else and what the consumer pays?

MR. MARQUEZ: The point I wanted to make is that it varies.

MR. WHITELEY: well, I am asking you to give us the lowest and highest range.

MR. MARQUEZ: That is the distributor plus the dealer discount.

MR. WHITELEY: No, no; the difference between the manufacturing cost to you and the price the consumer pays.

MR. MARQUEZ: we would be prepared to submit that, but we prefer to do it confidentially.

THE CHAIRMAN: I think Mr. whiteley felt

that perhaps if it were put in general terms it might not be confidential. On one article you might say 40%, and on another 60%, and it lies somewhere between those figures, which would not be giving away very much. I am just suggesting figures as general figures. If you could say they ran between 40% and 60%, or between 35 and 75, or whatever they are.

MR. PYNN: I think your figures are a little high.

MR. FAVREAU: That includes both marketing and the material?

THE CHAIRMAN: That is the entire difference between what you pay to the manufacturer and the price the consumer pays when it gets into his hands. In some cases it will be larger. Mr. Whiteley wants to ascertain within what limits do these things vary with your company. If you think that is something you would like to keep confidential ---

MR. MARQUEZ: We would prefer to keep it confidential.

THE CHAIRMAN: Well, let us have that.

MR. GERIN-LAJOIE: Referring to that paragraph on progressive price-cutting, you mentioned increased efficiency in production and also in distribution: Don't you think that by fixing prices at the manufacturing level, I mean the manufacturer fixing retail prices, the efficiency at the distribution level might not be so complete

as if retailers would really compete on prices:

MR. MARQUEZ: I would not doubt that at all. I think our case merely points out that to some extent you have a choice of alternatives, and I think none of us will dare to suggest that any alternative that eventually is chosen or suggested will be perfect. It is our suggestion that the least harm to the public interest can come from a set of conditions in which manufacturers with some degree of foresight and consideration, as suggested by the Lloyd Jacobs Report, administer these retail sale prices, under which conditions the retailer is permitted a fair and reasonable amount of competition at retail level.

MR. GERIN-LAJOIE: Do you realize, or is it really your contention that after mentioning that it is an exceedingly difficult matter to distinguish between the beneficial and the harmful character of any individual price-cut, you give to the manufacturer the privilege to decide which is which?

MR. MARQUEZ: You give the manufacturer the privilege to decide, yes sir, but after all the dealer who almost invariably -- I would not say "almost invariably" -- invariably enjoys the franchise for more than one manufacturer does not suffer the loss of all his sources of supply even if one manufacturer decides he will no longer sell to that dealer.

MR. GERIN-LAJOIE: Don't you think the

consuming public might suffer if a franchise is taken from a retailer because he cuts prices?

MR. MARQUEZ: How would the public suffer?

MR. GERIN-LAJOLIE: Because the public would be deprived of lower prices.

MR. MARQUEZ: You are assuming that the manufacturer would have to cut off the dealer on the assumption that the dealer was engaged in predatory price-cutting, when in fact he was engaged in progressive price-cutting.

MR. GERIN-LAJOLIE: Well, that is the point: There is a distinction to be made and you apparently give this power to decide, overwhelming power to decide, to the manufacturer instead of dividing this power between the manufacturer, the wholesaler and the retailer, which might -- I say "might" -- safeguard better the freedom of trade.

MR. SAMIS: In that connection I might mention that according to press reports as to the evidence placed before this Commission by retailers, particularly, they have shown a desire to have manufacturers establish their selling prices. Isn't that true?

MR. WHITELEY: And maintain them.

MR. SAMIS: And maintain them, yes.

MR. GERIN-LAJOLIE: Of course, that is why I am mentioning the consuming public; I am not mentioning the interest of the retailer. My question is, is it really for the benefit of the

public that the power to fix retail prices be determined by the manufacturer, and to go further, is the manufacturer really in a position to know what the distribution cost is at the retail level; is he really in a position to have all the factors necessary to determine that distribution cost?

MR. SAMIS: A manufacturer in order to plan his operations economically in a free enterprise system must be able to determine the price at which his products are sold to the consumer. Once he is deprived of doing that he has lost one of the tools of determining on what scale he will set his production rate and what his costs will be.

THE CHAIRMAN: Isn't it really the function -- the responsibility of the manufacturer, and his need to determine the price that he must receive from the sale of his goods, and of course the lower the price the consumer has to pay the larger the volume will be, and he must determine what, on an estimated volume, it is necessary for him to get in order for him to carry on business at a reasonable profit, but he doesn't need to fix the price below which it cannot go?

MR. PYNN: If I could answer that, I can clear up one of Mr. Lajoie's questions at the same time. You have said every manufacturer is interested in getting the maximum of volume because in so doing he gets his costs down and therefore greater profits to himself. Obviously,

the way to do that is to offer the most attractive prices to the end user, the end purchaser -- the consumer. So, therefore, it is in his interests to build a product which will give him a satisfactory profit and which will also give his distributor and/or his dealer a satisfactory profit and which will still sell to the end user at a satisfactory price and with satisfactory services. Now, all manufacturers -- and there are many of them today in most of the appliance fields -- are competing for that retail sale, and they are all striving to get their retail price down to the lowest possible level. Contrary to what Mr. Lajoie might think, the manufacturer is in an excellent position to know what distributive costs are, for this reason: He has worked either through his own distributing organization or, like some manufacturers, through a specialist in that field such as the Northern Electric Company. Either through his own organization or through the Northern Electric Company he has built up a dealer organization across the country, presumably. The dealer organization is in a position to know what the selling price should be in a competitive market. The distributor, therefore, to get his share of the dealers' volume will certainly be very quickly informed as to what competitive prices are, and progressively the manufacturer will be informed indirectly, if not directly, as to what the competitive prices on every product should

De.

Now, with that background I would like to go back to one of Mr. Lajoie's points, when he suggested that rather than have the manufacturer invested with this overwhelming power, as he suggests, to set the retail price, I think that the manufacturer through his distributor, or distributing division, and through his dealer organization will certainly know very quickly what distributive costs are in a competitive market. He will, therefore, be striving to set his prices which will be competitive and which will permit his dealer or distributor to show a profit on operations. The dealer and the distributor are, therefore, contributing to the manufacturer's thinking. So, while the final power may be in the hands of the manufacturer to determine whether or not a dealer is conforming to the overall policy, actually the thinking is made up of thinking of dealers and distributors in any area.

One more point: what we are asking for is a return to resale price maintenance, and if there is one thing which should be clarified immediately it is this; that we are not asking for retail price maintenance without free competition at the retail level because, gentlemen, prior to the enactment of the present legislation we did have free competition at the retail level. No manufacturer I know of in Canada today will cut a dealer off because

he cuts prices. As a matter of fact, in days when appliances were in short supply I have known distributors and manufacturers who cut dealers off for the very reverse reason, because when items were in short supply the dealers were adding a premium to the manufacturers' suggested price. There will always be competition because dealers will give discounts for various reasons, and trade-ins for various reasons, and in offering these discounts and trade-ins it will always reflect results of any inefficiency. But the manufacturer does not want to see wide-spread price wars brought about by those retailers who will deliberately omit both their obligations to their own customers and to their suppliers, and cut the price still further to a point where they make a dollar or two and are quite satisfied.

MR. GERIN-LAJOIE: But still would you find that the best way of solving the problem would be to leave in the hands of the manufacturer the power to decide whether it is a harmful practice or not and whether price-cutting is reasonable or not?

MR. PYNN: Yes.

MR. GERIN-LAJOIE: When mentioning distribution costs I mean distribution costs down to the consumer, including retailing, and you believe, having that definition in mind, that the manufacturer is able to determine the distributing costs to the consuming public?

MR. PYNN: I don't think there is anyone better qualified than the manufacturer to determine that.

MR. GERIN-LAJOIE: Would you not think there are great variations in the distributing costs, and I will put a very simple example: Don't you think the distributing cost or retailing costs of a retailer on St. Catherine Street west, around Peel, is that the same as that of a small retailer in the East end of Montreal in a small street?

MR. PYNN: There are bound to be variations.

MR. GERIN-LAJOIE: So how does price maintenance allow you to pass those variations on to the consuming public?

MR. PYNN: I thought I had just covered that. I touched on it, perhaps lightly, but as I said before, prior to the enactment of the present legislation, and during the period when appliances came into free supply there was very definitely free competition at the retail level.

MR. GERIN-LAJOIE: Is it your view that all the leading manufacturers had that policy followed by them?

MR. PYNN: Yes, I don't know of any manufacturers who would cut off any retailer because he made justifiable price reductions. As long as he did not start a price war I don't believe he would be cut off.

MR. GERIN-LAJOIE: Your view would be to come back to price maintenance just to avoid

the harmful practices of cutting prices for the purposes of price wars:

MR. PYNK: Exactly.

MR. MARQUEZ: May I make one point? You asked whether or not, suggesting there would be a difference between the overhead of a retail store on St. Catherine Street as against a small store in the East end; I think we can assume that the overhead costs that are of importance is the proportion of overhead costs ascribable to a unit to be sold. The reason the St. Catherine's store is more expensive is because its position will give it greater volume, and I suggest the small East end dealer may not actually be operating in terms of mark-up one bit more economically than the bigger store.

MR. GERIN-LAJOIE: Don't you think that the retailer at one place might be reasonably satisfied with a lower profit, having different conditions of living?

MR. MARQUEZ: All I can say is that we have been in the distributing business for quite some time and quite an appreciable number of years during the period of resale price maintenance, and we have yet to find a retired electrical appliances dealer. They all get by making a living, and that is just about all. At the present time those dealers are just simply not doing that. The dealers who are cutting prices are at the moment certainly making a

profit, as Mr. Samis pointed out, to our knowledge from the press reports this Commission has had -- and one brief suggesting the status quo be maintained. Certainly, though, it would be quite surprising if the group of retailers engaged in these price-cutting practices, and who were at the moment making substantial profits out of it, it would be surprising if they did not support it, but I suggest that the dealer who is, in fact, prepared to carry out those responsibilities which he has always been called upon to carry out in the past, and which we suggest are necessary for the long-term health of the electrical appliances business in all its phases, that that dealer is not capable of living satisfactorily.

THE CHAIRMAN: There is one further point with respect to your position concerning the remedies for predatory price-cutting. You point out on page 8, in referring to the legislation against price-cutting, that due to the question of intent being involved it is often difficult to distinguish between predatory and protective price-cutting, and even more difficult to distinguish between the two forms of predatory price-cutting: I want to be clear what you intend to convey by your brief is that because of those difficulties you don't think it could properly be handled by law, and that you desire the manufacturer to assume that responsibility.

MR. MARQUEZ: I have one point there. Actually

when one reads the newspapers and sees a substantial price-cut, to people other than the manufacturer of the product, the distributor of the product and the dealer involved, to people other than those a great deal of surmise might be engaged in as to why. well now, those three people together should know whether or not that is actually a case where the dealer is predatory price-cutting or whether, in fact, it represents an effort to join up on the part of the manufacturer to help relieve the dealer of the inventory. There may be a great many problems involved that are difficult to understand other than for the people immediately concerned.

THE CHAIRMAN: You think it would be too difficult to frame in legal terms prohibition on the things that would be really predatory, leaving the progressive price-cutting features free?

MR. MARQUEZ: That is right.

THE CHAIRMAN: But you want the manufacturer to assume the responsibility of determining in any particular case whether it is predatory price-cutting on which he should take some action.

MR. MARQUEZ: If he elects to do so.

THE CHAIRMAN: well, he must make the decision?

MR. MARQUEZ: All we can say is that we have operated during the period of time in which he did. and in fact very rarely elected to do

anything. Perhaps I will put it this way: the very fact he had it in his power to do so if he wished to -- at least, it wasn't expressly forbidden -- in itself exercised a cure on those prices.

THE CHAIRMAN: There is one point I would like to ask in connection with a remark made a few minutes ago. You say you thought no one was better qualified to determine the distributive costs than the manufacturer; would you say the manufacturer is better able to determine the distributive costs than an efficient retailer himself?

MR. PYNN: The manufacturer is in a better position to assess overall distributive costs. Certainly it cannot be applied to individual specific costs in the case of any one retailer who may be able to save a percentage; obviously the manufacturer is unqualified to do that.

THE CHAIRMAN: I didn't think you meant quite that.

MR. PYNN: I was speaking very generally about the cost of merchandising a product to the public.

THE CHAIRMAN: That is, the general level of what you might call average costs would be within the purview of the manufacturer's knowledge?

MR. PYNN: And when we say "average" we mean average efficient costs.

THE CHAIRMAN: You don't think that any

efficient retailer who happens to enjoy a fairly large volume should be free to make any distinctions in prices?

MR. PYNN: No, I didn't say that. I think this, that the efficient dealer certainly should be in a position to either enjoy the profits of his greater efficiency or pass them along to his customers.

THE CHAIRMAN: And he has a choice?

MR. PYNN: Right.

THE CHAIRMAN: If he sells at the maintained price he makes a larger profit, and if he cuts his price a bit he probably increases his volume?

MR. PYNN: Yes, to the joy of the manufacturer.

THE CHAIRMAN: But on the other hand does not that raise the kind of difficulty you are talking about today?

MR. PYNN: No, because any savings he may make because of efficiency -- I am not including cases where the dealer deliberately omits any of his obligations, but where he makes savings through actual efficiency, without any deficiencies, then the savings are going to be small enough that he will not start a price war.

THE CHAIRMAN: How are you going to draw the line between a price-cut in which the functions are discharged, which you would say is legitimate, and one which goes just a little

over the line?

MR. PYNN: Well, I can explain it this way, perhaps: We know -- and I think you have had this pointed out to you before at other hearings -- it is very definitely known in the industry that any retailer who is performing all of his functions is going to find that with an efficient operation his costs of doing business are going to fall into a rather narrow track of gross profit rate, or a percentage of his gross sales; so we know that even with any known efficiencies, any retailer who does streamline his operations is going to make savings which are so small that anything he might do in passing them along to the consumer will not start a price war but will more probably be in line with what his competitors are trying to do. He is not going to be able to advertise the products at, say, 10% above his costs.

THE CHAIRMAN: You don't think that a distributor, through his efficiency and his public relations or any other thing that may help him, may be able to so increase his volume that his cost per unit would be substantially less -- his operating cost -- substantially less than average?

MR. PYNN: Not substantially; it may be substantial in dollars, but percentage-wise, no. It has never proved that way in our past experience.

THE CHAIRMAN: You don't think it could amount to 10%?

MR. PYNN: No, I don't think so.

MR. MARQUEZ: May I read something that is relevant? It is quoted on page 303 of the Director's Report, and it is in the Lloyd Jacobs Report:

"Such price reductions are plainly of a different kind from those which result from low-cost distribution, or from those which may be considered reasonable in the light of an expected increase in turnover. While it is true that no trader can accurately estimate the increase in his trade which may accrue from price reductions, there is an obvious difference between making a noteworthy reduction in the price of specially selected goods and a gradual reduction in the general level of prices over a whole range."

He assumes, or appears to assume, that efficiencies are, if not impossible, unlikely to result in substantial, marked reductions in cost, and I would venture to suggest that a 10% reduction is a very great reduction. If we could get a 2 or 3 percentage improvement on efficiency in our operation we feel we have done quite a bit.

THE CHAIRMAN: I think that leads to another

question. In certain fields of merchandise -- I am thinking now of groceries -- during the last 25 years there has been, through the development of chain stores and super-markets and so on, a reduction in the operating costs of the retail grocer -- a pretty substantial one compared to former days. I think that is correct; that is my understanding of it. Is it your contention that that sort of development is not feasible in the appliance field?

MR. MARQUEZ: Far be it from me to suggest anything is not feasible.

THE CHAIRMAN: well, you are contending that the circumstances in the appliance field are quite different.

MR. MARQUEZ: I would like to suggest that there are very great differences. I think that the differences lie fundamentally in the fact that the products sold in the grocery store are consumable products; they are bought every day, and if you make a mistake and buy the wrong thing today, you can buy the right thing tomorrow. You are paying 10¢ or \$1.00 for the article. The consumer approaches the purchase of that type of product in a far different frame of mind from what he does when purchasing a large costly product. The consumer does not want to have a demonstration of how it works; he will go out and buy it and try it, and if he does not like some, let us say, soup-making device,

he will try another. That is the fundamental difference between the two.

THE CHAIRMAN: I see the difference but I wondered if you felt those differences were such that it would be false to even imagine that something of that process which has already taken place in groceries and one or two other fields would begin to take place in the appliance field; whether you think it is starting, or whether what is taking place now is sporadic and will disappear.

MR. MARQUEZ: If I may try to paraphrase what you say, to be sure I have got your thinking. You are wondering whether these low prices appearing now might not, in fact, be manifestations of an improved, more efficient method of distribution?

THE CHAIRMAN: whether it is a sign of the beginning of a change in distribution in the appliances field?

MR. MARQUEZ: I would hesitate to say they are not. What we do say with some assurance is that those that are taking place are doing so at the expense of the distributive procedure; that they are in themselves not increased efficiency; they are like a condition that might occur in the manufacturing operation in which cost saving is obtained either in labour, material or time by a straight reduction in quality. That is not a true efficiency at all. That is a pseudo-efficiency which the consumer very soon recognizes. Perhaps the difficulty of

this problem is that the consumer who is able to purchase one of these appliances at a preferred price, in effect, suffers no damage himself. It is consumers in general who are hurt. In the case of pseudo-efficiency on the part of the manufacturer, where quality suffers, the consumer suffers immediately and personally. The man who buys a device which breaks down a week later is hurt, no matter what price he paid for it. The individual consumer who buys at a preferred price has no heart-break about it; he has made a bargain.

THE CHAIRMAN: He thinks he has.

MR. MARQUEZ: He undoubtedly has, and it is a little bit far ahead to suggest that if he buys a refrigerator today then maybe when his daughter buys a refrigerator 15 years from today she may be paying a higher price. It is too remote.

MR. GERIN-LAJOIE: Gentlemen, may I take from what you have said up to now that you agree with another paragraph of the Lloyd Jacobs Report which was not quoted when you read page 306 of the Director's Report? That paragraph reads:

"It appears to us to be contrary to the public interest for a manufacturer to use his power to cut off supplies in such a way as to obstruct the growth of particular methods of trading, to impede the dis-

tribution by another manufacturer of competitive goods, or to deprive the public of the benefits of low-cost system of distribution.

Is that right, that you agree with that expression of opinion also?

MR. MARQUEZ: At no time did I suggest, nor did any of us, that we agree with everything in the Lloyd Jacobs Report. Nor would I suggest that you necessarily agree with all the matters presented therein. However, we have the impression, although it is not so specifically stated, that in the Lloyd Jacobs Report and in the Director's Report, both those Reports brought about an economy where demand tended to exceed supply. That is a point the Commission might give some thought to. I think Mr. Pynn pointed out there were instances in the period after the war where some of the punitive practices used by manufacturers against dealers was to prevent the dealer from, in fact, inflating the price -- in fact, asking you to pay a premium because they were in short supply. At the present time, under the present legislation, supply tends to exceed demand, and the balance is that way. But we may very well face under these same conditions a different set of conditions under which demand tends to exceed supply, in which case it would be just as easy under the present legislation for the dealer to charge atrocious prices to the consumer

and still the manufacturers have no say in the matter, and it would seem to me that is a point that may well be borne in mind, because that is the other end of the swing of the pendulum.

MR. GERIN-LAJOIE: Regarding a paragraph on page 2 of your brier:

"Protective Price-Cutting: There are two types of price-cutting, the first to meet competition",

and you seem to express the opinion that these types of price-cutting are only temporary and irregular. Can you explain what you mean by this part of your brief? I just wonder how there could not be price-cutting to meet competition under a continuous basis?

MR. PYNNE: There can be under present circumstances, and it is for that very reason the appliance industry has suffered such a set-back during the past eight or nine months. But under retail price maintenance, there the manufacturer always has the power to stop a war at the retail level by cutting off his particular brand of goods from the party who is at the root of the trouble. Let us not forget, gentlemen, we should not look on the manufacturer as some all-powerful individual who has no interest in this business, because let us not forget that any time a manufacturer cuts off a dealer for any reason whatsoever, then, unless he is prepared to sacrifice whatever he is getting, he has to find

another dealer. In other words, the manufacturer has a stake in the business of any dealer handling his line, and he is not going to lightly cut off an outlet to the public; but, nevertheless, where a price war starts the manufacturer of any reputable brand is going to be interested in stopping it, because, as we have tried to point out, that price war, while it may mean immediate economies to the public, it is not in the long term interest of the public, the dealer or the manufacturer.

MR. GERIN-LAJOIE: What I have in mind is that, don't you think there should be competition on a continuous basis in a free economy?

MR. PYNN: Well, there is.

MR. GERIN-LAJOIE: Maybe we do not understand "competition" in the same sense.

MR. PYNN: There is competition on a continuous basis, and that I tried to explain before, because there are always means of disposal and of offering competition to any other dealer in the neighbourhood. What is meant here, when we say they only occur temporarily, is protective price-cutting wherein the dealer is forced to cut his price below a desirable level.

MR. GERIN-LAJOIE: Was this a particular type of competition you had in mind?

MR. PYNN: If I might imagine dealer "A" who has made a bad guess and is stuck with a heavy inventory of a given type of appliance, and to liquidate his investment he has to cut

his prices; dealer "B" down the street, he may have and a perfectly normal inventory, in order to get normal turnover, would have to cut his prices to a similar level to get his turnover.

THE CHAIRMAN: Your protective price-cutting really has more than the two features you mention here, because you don't mention distress merchandising.

MR. PYNN: Well, we have "perishable or subject to obsolescence".

THE CHAIRMAN: Well, he may be being pressed by the bank, or something of that kind.

MR. PYNN: That comes under that; we didn't specially set it out.

THE CHAIRMAN: It is an additional one that would come under "protective price-cutting"?

MR. PYNN: Yes.

MR. GERIN-LAJOIE: Referring to page 4 of your brief, the numbered paragraph at the bottom of the page, looking at paragraph 1:

"The distributive procedure must provide the field service necessary to keep the appliances in good repair and the consumer satisfied."

would you have any evidence that so-called price-cutters don't give the service? Because you may be interested to know that the Commission got evidence before it in Toronto of cutting prices and also effective service.

MR. MARQUEZ: I would be inclined to say

that under present conditions the very first thing the price-cutter will not eliminate is service, for the very obvious reason that strikes home first to the consumer. It is quite obvious, if our argument holds water, that those features of distributive procedure, those essential features which would be eliminated by a dealer engaged in price-cutting, would be those features which would take longest to introduce themselves to the consumer. Therefore, he does not leave off service, because word gets around too fast.

THE CHAIRMAN: How does he function, then?

MR. MARQUEZ: He usually has very excellent service.

THE CHAIRMAN: If he does cut down service how does he function? I thought your contention was that service is one of the functions of the retailer and he is only able to make these heavy reductions by eliminating some of those services?

MR. MARQUEZ: Yes.

THE CHAIRMAN: If he does not do that and still reduces the price . . . ?

MR. MARQUEZ: I used the word "service" in the sense Mr. Lajoie meant it, and that is, repairs and installation -- service to keep the appliance in good repair. I meant servicing of the appliance. He does omit certain things which he has to depend on other dealers to do for him. For example, the explanation of features of the merchandise, the opportunity, on the

part of the consumer to compare one appliance with another, and to have the opinion from the dealer as to the desirability of this feature as against that feature.

THE CHAIRMAN: You mean they have not got the various appliances on the floor where the purchaser will have an opportunity of comparing them, and the salesmen do not discuss those things with them?

MR. MARQUEZ: Many of them have appliances on the floor. They are sold on a very strong argument, which this dealer has, and that is a newspaper advertisement, "Buy this at such and such a price". I wonder what would happen if eventually none existed but the price-cutter, because he cannot exist unless he has somebody else to compare his price with, and if there were none but his I suggest a great deal of the value would disappear.

MR. WHITELEY: What do you think of that solution if the manufacturer ceases to name the price?

MR. MARQUEZ: I think a good deal of the manufacturers have thought about that. What is actually happening today is that the suggested list price means almost nothing in areas where this kind of price-cutting takes place. We are still weighing the pros and cons.

THE CHAIRMAN: You have not arrived at any conclusion as to what would happen if the suggested list price was abolished?

MR. MARQUEZ: That is right.

THE CHAIRMAN: And you left that entirely to the wholesaler and retailer?

MR. MARQUEZ: We have come to no conclusion on that.

MR. FAVREAU: I understand your contention would be that in what is called the normal margin which a dealer should take is included four items of service which he should perform for the community, including servicing, plus publicity plus opportunity of the customer to compare plus creative selling plus display and demonstration of the article, and I suppose that the conclusion with respect to one who would cut prices would be that in cutting his prices and in not performing one of these functions, in reality he does not give anything to the client because he deprives the client of these functions which normally he should perform, but if in fact a dealer does perform one, two, three or four of these services wouldn't he be allowed to cut his prices if he could do it, at least to the extent of what he believed was the value of the service which he does actually perform, because he does not then deprive the customer of something?

MR. MARQUEZ: That really comes back, fundamentally, to the same point we had a while ago, and that is, is it our opinion that it is possible to introduce more efficiency into the distribution operation. I would hesitate to say

it is not possible, but all we say is that price-cutters who do so do, in fact, eliminate essentials.

MR. FAVREAU: The reason why might be very mysterious, but let us say there was one retailer who would perform at least one of these services; wouldn't he be entitled to reduce his price at least to the extent of that particular service of which he is not depriving the customer, because then you cannot say the customer suffers from the reduction in price.

MR. MARQUEZ: I think I get your point; in other words, you are suggesting he could sell an inferior article providing he reduced the price.

MR. FAVREAU: No, he could sell the same thing if he performed the function, or any of these functions, and surely one cannot say that he is reducing his price because he is depriving the public of that service.

MR. MARQUEZ: Since he does not perform the function he reduces the price, and therefore is not charging the customer for it.

MR. FAVREAU: Yes, but if he did reduce the price, then the argument would work.

MR. MARQUEZ: If he did perform the functions and reduced the price, I would say yes.

MR. GERIN-LAJOIE: Isn't it possible that customers might be content with buying some goods without having any guarantee for their servicing? Isn't it possible that I, going into a store, would be content to buy certain merchandise

at \$5.00 less than the \$30.00 list price knowing that if I have any trouble with the article I will have to pay for the servicing, and that being possible, would you say any competition with such a situation exists?

MR. MARQUEZ: That is a pretty tricky one. I would like to suggest that the value in the purchase price to the consumer for servicing is not based on an individual value for each unit. It is based -- I would not go so far as to say on an actuarial basis -- but on an overall picture, and it does depend on the basis that a certain number of customers will not require service. If you want a bottle of milk and you put out your money every morning you don't say, "You have got to give me something off because I don't want credit, and that is part of your charges"; I don't think the milk companies would create a special price for each consumer.

MR. GERIN-LAJOLIE: Isn't it possible that one milk company would do this business on a cash basis and, having lower costs, some people would be content to use that company, and some other people, wishing to have credit, would use the other milk company?

MR. MARQUEZ: That is right. However, the problems of service you are talking about are actually carried out partly by the manufacturer who has to provide guarantee on parts, partly by the distributor who has a function to perform,

and partly by the dealer, and I would suggest that the overall cost of service, which is not extremely high, is based on its spread over the purchasers some of whom require service and some of whom do not. I suggest it is theoretically impossible to create a new scale of charges in which each person pays, in fact, for the particular services he requires, and those who do not require services pay nothing at all, in which case some people would pay a good deal more and those not wanting service would pay less.

MR. GERIN-LAJOIE: I am not envisaging a situation where one would pay for service received, but where one would state in advance that he was paying so much for an insurance for service. That is what most brand manufacturers do now; it is included in the price of the goods, so it is on the basis of an insurance, more or less.

MR. MARQUEZ: That is right.

MR. GERIN-LAJOIE: But if I go into a store I know, for instance, that I am paying \$100.00 for a radio and that includes servicing, but in another case I pay only \$90.00 and I know he is not giving any service; why should the manufacturer oppose that practice?

MR. MARQUEZ: I would think the answer would be obvious: It is quite obvious if I am a manufacturer of a brand name which I have built up over a number of years and which the public has some trust in, that if I fail to take

such steps as are necessary to make as reasonably sure as I can that the consumer will obtain service, sometimes in spite of himself, then I am risking the name.

MR. GERIN-LAJOLE: Isn't it true that nowadays T.V. sets are sold without servicing guarantees -- parts are changed possibly, but not home servicing?

MR. BROOKS: Some of them are sold without service facility, but I don't see that makes any reason for a price-cut of a predatory nature.

MR. GERIN-LAJOLE: No; well, that would possibly show that it is a practical commercial basis for doing business, and that it might be envisaged in another field also.

MR. BROOKS: What happens eventually is that the customer who is unable to obtain service from the dealer undoubtedly comes back to the distributor or manufacturer for that very service which he demands. He is going to demand service whoever gives it, and it comes back to the manufacturer to perform functions for which he has already set up in his scale of business with the dealer.

MR. MARQUEZ: Certainly it is theoretically possible, and in fact is done, for dealers to sell T.V. sets or advertise T.V. sets without the service charge, but we suggest that in fact the manufacturer does not like that any more than he likes predatory price-cutting.

what the dealer does is to use the price without service to make it look good in the newspaper advertisements, and then sometimes surprises the customer when he learns this does not include service.

THE CHAIRMAN: Yes, but if the buyer knows he is not entitled to the service and not paying for anything of that kind, then, while the manufacturer may think there is some danger of getting a bad name through appliances falling down, there is nothing predatory about it?

MR. MARQUEZ: I would think there would be two things against it: First of all, the manufacturer, of course, does not like that idea at all because it places his appliances in the most vulnerable position of any appliances. As I said, the second thing is that these service charges are based on a general spread on the assumption that a high proportion of the appliances do not require service.

THE CHAIRMAN: Suppose I am a purchaser and I am satisfied with the quality of your product, and I am going to gamble and not intend to have any service -- and there are some things about which I would take that stand myself -- I have a reason for it, and if by taking that reason I find I can save 10% of the purchase price, I know that if something goes wrong I have no claim on the manufacturer; I know I have to go to a repair man and pay for it, and

I am willing to take that chance, and if I do so, is there any reason why I should not pay for it?

MR. MARQUEZ: I can give you a dozen reasons why. You can go to a automotive manufacturer and say, "You have tires which are made for my safety, but you can reduce the amount of rubber and I will take a chance on it".

THE CHAIRMAN: No, that is cutting the quality. I am talking of your standard product in which I have confidence, and you are willing to provide service at a price which is included in your selling price. I feel I won't need the service and I gamble on that, and therefore because that part of the cost is eliminated to you you will sell to me for a smaller price; why should I not be able to pay it at a smaller price?

MR. MARQUEZ: I think that I cannot disagree with your suggestion; it is possible, but what I do say is that the scale of service charges is so arranged that they are not economically sound unless the charge^{is} made on each appliance that is sold, because the charge does not cover the cost of servicing specific units.

THE CHAIRMAN: No, but would not that balance up?

MR. MARQUEZ: If every second fellow came along, if it is worked out on something like 1,000 appliances, and you expect to get service on 500, you have to collect the service charge on the 1,000 because nobody knows which

of the 1,000 requires service. But if 500 people say, "I don't want service so I don't pay", and you get service calls on 500 ---

THE CHAIRMAN: But surely not all of those who buy it that way will be the ones who don't need the service; it should be the same proportion.

MR. MARQUEZ: Well, 250.

THE CHAIRMAN: Yes, and if that developed you would cut down your service arrangements to meet the requirement of the new situation -- theoretically at least.

MR. MARQUEZ: Yes.

THE CHAIRMAN: There may be good practical reasons why it won't work.

MR. PYNN: Frankly, I don't know just how it fits into the picture, but I would like to say this: we are talking about something which is a little more than the question of mechanical service or the dollars and cents involved in that. We have referred this afternoon to the investment which the manufacturer has not only in his capital investment in manufacturing equipment, but the investment he has in the reputation of his name and the brand name of his product which he manufacturers. The manufacturer has spent a great deal of money not only in developing and tuning up the product, but in promoting it in his national advertising, and I think that just as much a part of his cost of national advertising and promoting his product is this very

fact, that each manufacturer of any brand product stands behind that product and expects the distributor and the dealer to stand behind it with him. Behind the dealer, in taking up the product, sit the distributor and the manufacturer, and eventually it is the manufacturer's responsibility. We see it every day. If the customer does not get the service to which he thinks he is entitled from the dealer, regardless of how reasonable or unreasonable it is, then he goes either to the distributor or the manufacturer, or both, and says, "I demand satisfaction." I think the manufacturer is entitled to protect the reputation he has built up by saying, "We will stand behind this product regardless of what purchase price is paid by the end user. We will give a guarantee of 90 days or a year, or 5 years."

THE CHAIRMAN: The manufacturer can take that position and fix his manufacturing selling price on that basis.

MR. PYNN: Yes, but my point is this: The dealer in selling the article should not have the right to take away the manufacturer's policy of standing behind every article sold, because that is the manufacturer's guarantee. Let us not forget, sir, that the question of service to the customer does not only involve the changing of the top of a washing machine, or something of that nature; it involves a lot of things, and it involves a lot of trouble-calls which are sometimes

more expensive than the repair calls. If Mrs. Jones happens to lose her book and happens to forget what the dealer told her when he described the machine, she can get into trouble, so she 'phones the dealer from whom she purchased the machine and he might have to send a man out to explain her difficulty and show her what she has done wrong, and perhaps give a complete new demonstration, and that is part of his obligation. It is very difficult to translate that into dollars and cents for any given customer.

THE CHAIRMAN: In advance.

MR. PYNN: Yes; well, that is when he has to do it, of course.

THE CHAIRMAN: We had some evidence from one large retailer -- I think it was with regard to television -- that his average cost of servicing through a given year ran somewhere between \$23.00 and \$24.00 a unit; in a good many cases, nothing at all, and the top case was about \$150.00 -- it varied from nothing to \$150.00, and the average was something like \$23.00 to \$24.00.

MR. PYNN: Well, that is something which will vary according to brand and type of appliance and the territory being served, and so on; but, nevertheless, it is part and parcel of the obligation which any dealer has to his customers to see that the product is backed up. If we accepted as axiomatic that the dealer has the privilege to say, "I will reduce my price and

tell my customers I do not offer any service. and the customer says, "All right, that sounds fair enough. I will pay for any service I need", who do you pay? Because if your dealer won't do the service, who will?

THE CHAIRMAN: Aren't there service companies?

MR. PYNN: There may or may not be. If a manufacturer has one dealer in a given location he expects the dealer to handle the service, and there is sufficient profit in the mark-up to enable him to do so, then obviously it is his responsibility, and it is made clear to him at the time he gets the franchise. If he refuses to do it, there is only the distributor or the manufacturer left who can do it, and in the instances I have described, they are not set up to offer those services.

THE CHAIRMAN: It applies particularly in the small centres?

MR. PYNN: It might apply in an urban centre too.

THE CHAIRMAN: It does not apply in a place like Montreal?

MR. PYNN: Well, if the dealers started this sort of thing and the manufacturers subscribed to it, then each of the dealers handling that brand might find he had to drop his prices. we have no departments for servicing consumers' appliances. You, as a customer, then have something

which cannot be fixed.

THE CHAIRMAN: I would have thought in a place like Montreal you would find somebody to do it.

MR. PYNN: well, we have carried it to an extreme, of course. That is what would happen if there was any orderly cutting out of the services.

MR. GERIN-LAJOLIE: Gentlemen, passing to another point, there was mention made of the advertising costs and promotional costs generally speaking; don't you think some of that cost might be dispensed with and passed on to the consumer -- and I am not expressing any opinion; I am just putting questions and trying to clarify your views for the purpose of the inquiry. I am quoting from Dr. Edwin Nourse, who wrote a book "Price-Making in a Democracy". Dr. Nourse is now a consultant to business groups in the United States, and he writes in this book, published in 1944, at page 250:

"When price maintenance on manufacturers' 'advertised brands' puts too much sand in the distributive machine, the aggressive large-scale distributor turns to 'private brands' as a means of lubricating sales, while still catering to the public's liking for a distinctive name and package. To some extent he even pushes unbranded articles. In our judgment the key to inefficient practice here lies in

insistence, chiefly on the part of the manufacturer, on the maintenance of selling prices and the resort to high pressure methods of salesmanship as the means of securing volume. This tends to expend promotional costs, thereby offsetting savings introduced in production expense, and gives a color of justification for the maintenance of high consumer prices."

what would be your reaction to such a position?

MR. MARQUEZ: I would like to have you clarify your question. Are you suggesting prices might be reduced by elimination of advertising expenditures?

MR. GERIN-LAJOIE: Part of it, and particularly the part of it done by the distributor or the retailer himself.

MR. MARQUEZ: Perhaps I could ask a question. I would like to know if you have any idea of what proportion the advertising takes of the total cost?

MR. GERIN-LAJOIE: well, I am not mentioning any figures. I am just asking, could you give that figure?

MR. MARQUEZ: Earlier in this discussion at one time the question arose as to whether or not it would be possible to reduce the cost by 10%, let us say, by efficiencies. Now Mr. Lajoie has asked whether or not advertising, or

uneconomical advertising, could not be eliminated and so reduce the cost. I would like to suggest that if it were theoretically possible to remove all advertising whatsoever from the development of a line that you might reduce the cost somewhere in the neighborhood of at the very most 5% -- if all advertising completely were eliminated. Even Mr. Nourse does not suggest all advertising. He talks about the proportion which he suggests is high-pressure and extra promotional.

MR. GERIN-LAJOIE: On page 5 of your brief you say, at paragraph 4, "The distributive procedure must also be depended upon to do the major job of displaying, describing, demonstrating and selling the benefits of new appliances, such as electric clothes dryers, garbage disposal units, room air conditioners, and others as yet undeveloped." The question is, having in mind that some retailers would not do so much of that job and would give the corresponding reduction to the consuming public, would there really be any objection from a good economic standpoint?

MR. MARQUEZ: I would like to go back, because you are taking a statement out of context. We started off saying, "Low retail prices to the consumer are dependent on high volume...", and I think you will agree with that; I don't assume you disagree with that. "...as manufacturing and distributing efficiencies can be effected only under conditions of high volume."

Therefore, we suggest that if any of the essential conditions which contribute to the development of high volume are eliminated, certainly you can say reasonably and logically that the dealer is not asking the consumer for something more. What he is doing is contributing to a set of conditions which would result in a reduction in volume and eventually result in high manufacturing costs, even though that specific consumer has not paid any penalties and has got more than his money's worth; but he has contributed to other consumers later on paying more for those same appliances.

MR. GERIN-LAJOLE: Isn't it possible that selling at lower prices might bring a higher volume of sales?

MR. MARQUEZ: If you drive along in an automobile at 50 miles an hour and put your foot on the clutch the first thing that happens is that the car shoots ahead. I suggest if you keep your foot on the clutch it is not going to go ahead for very long. You have got an immediate surge forward; you have removed part of the driving power. Certainly, price-cuts will produce an increase in volume, but eventually they will produce a reduction in volume, because those dealers who cannot compete almost immediately cease to buy, and the first step is a channeling of retail outlets. When they haven't got anybody to compare their prices with, then they haven't got the strong argument which

they have at the moment. The argument that a refrigerator can be sold at \$250.00 only means something when he says, "Formerly priced at \$375.00". You take away the fellow pricing it at \$375.00, and you will have no volume left. The argument here is that as a result of that your prices will increase rather than decrease.

MR. GERIN-LAJOIE: You referred a moment ago to the paragraph after the sub-title on page 4 of your brief, regarding the relation between high volume and low retail price: Isn't it true that the high volume of sales of electrical appliances after the last war did not reduce retail prices but had the effect of bringing into the retail business quite a large number of people who, by their large number, were not able to have a very low distributive cost, and finally did not reduce retail prices?

MR. MARQUEZ: You have made two statements. In one case you say the high volumes after the war did not reduce costs. I would not agree you had high volume after the war.

MR. GERIN-LAJOIE: I mean progressively.

MR. MARQUEZ: You had a condition in which you could not get high volume, and manufacturers were converting back to peacetime activities and certainly not working under ideal circumstances to manufacture efficiently until sometime after the war. Your second statement suggested that a great many inefficient retailers were there.

MR. GERIN-LAJOIE: New retailers came in, and due to their large numbers were not able to provide so efficient distributive costs; let us say they were sitting on their counters half of the day, but they were satisfied with their net profit at the end of the year because they were making a large profit on each individual article?

MR. MARQUEZ: Well, I said earlier about a refrigerator selling in 1948 at \$379.00, and the equivalent refrigerator in 1954 is listing at \$299.00. I would suggest that is a reduction, and that is the manufacturer's list price.

MR. GERIN-LAJOIE: At what time did that happen?

MR. MARQUEZ: 1948 the refrigerator was \$379.00, and in 1954 it was \$299.00.

MR. GERIN-LAJOIE: Isn't it possible that still a greater reduction could have been made if the distribution costs had been lowered?

MR. MARQUEZ: I will admit that, yes; if distribution cost can be reduced so can retail prices.

THE CHAIRMAN: When did the reduction take place from 1948 level?

MR. MARQUEZ: It is progressive.

THE CHAIRMAN: A series of cuts each year?

MR. MARQUEZ: Yes. The point there is that, after all, the manufacturer, and each link in the chain -- manufacturer, distributor or dealer -- knows perfectly well that eventually

the prosperity of his operation depends -- on our method of doing business -- on volume. He knows he can get a higher volume of sales when selling an article for \$256.00 rather than at \$350.00. So, there is a strong drive on the part of every element in the chain to reduce prices. I might mention, too, that I did not say in these 1948 and 1954 figures that they are not constant dollars; these are dollars in 1948 and dollars in 1954. The dollar in 1954 is not the same as it was in 1948.

MR. GERIN-LAJOIE: Oh, yes, but you would have to reduce everything -- labour, and so on -- in constant dollars.

MR. MARQUEZ: No, if that 399 were expressed in 1948 dollars, and the buying power of 1948 dollars, it would be considerably less. I don't know what the ratio is.

THE CHAIRMAN: It would be less.

MR. GERIN-LAJOIE: Well, I have a very last question from page No.7 of your brief: At the bottom of the page, -

"The current prevalence of predatory price-cutting and the alarming rate at which it is spreading; the very real harm which has already followed in its wake in the form of an accelerating rate of failures among the smaller retailers . . .":

is it your opinion, or would you have figures to

support the view that there has been a greater number of failures in the appliance retail business than any other retail business?

MR. SAMIS: I have here a copy of a brief submitted to you in Toronto by the Canadian Manufacturers Association, and they quote:

"...to show that the increase in failures since the effect of the anti-resale price maintenance legislation is as follows: 1950, failures 11; liability \$90,000.00; 1951, failures 22, liability \$387,000.00; 1952, failures 18, liability \$538,000.00; 1953, failures 43, liability \$2,220,000.00."

It is our belief that that is partly attributable to predatory price-cutting.

MR. GERIN-LAJOLIE: But that does not give any comparison with other businesses -- other fields.

MR. SAMIS: No, I have no figures on that.

MR. GERIN-LAJOLIE: It may be the general trend of business in Canada.

MR. SAMIS: Partly that, yes, and partly predatory price-cutting, in our opinion.

MR. GERIN-LAJOLIE: What happens in the appliance retail business may happen in all retail businesses in the country?

MR. PYNN: All as the result of the same

legislation?

MR. GERIN-LAJOLIE: That may be a matter of interpretation.

MR. WHITELEY: I wonder if any member of the delegation would care to express an opinion as to the possibility of distinguishing between those lines which have already received wide public acceptance and those appliance lines which are in a state of perhaps being introduced or brought up to wider degree of public acceptance, and whether franchise dealers would undertake what you consider to be the special promotional effort necessary to bring a new product into wide acceptance?

MR. MARQUEZ: What you suggest is something that is actually being used to a degree at the present time, and that is, the manufacturer in setting up his scale of discounts to a dealer takes into account what he considers to be the difficulty in selling the appliances. I don't want to suggest that that has been carried to what I consider its ultimate degree. Undoubtedly, it could be developed further, but it does exist at the present time -- a variation in the scale of discounts to the dealer based on an estimate of the relative difficulty of selling the appliances. It has also been suggested you might have dealers handling already established appliances, and other dealers doing what you might consider to be the exploratory work. I think it is theoretically possible but I doubt very much if it

is practical, for this reason: That in introducing a new appliance quite obviously the dealer and the manufacturer go through periods of time which are relatively unprofitable in order to reach the time where the volume will produce a profit. What you are suggesting is that you set up one fellow, and when it becomes attractive you hand it over to somebody else, and it seems to me it might be difficult.

MR. WHITELEY: Well, the time element involved in reaching what the manufacturer really regards as a high degree of public acceptance -- some figures were given to us in Toronto, and there was a wide difference in the sale of the customary type of washing machines and the sale of automatic machines.

MR. MARQUEZ: Yes.

MR. WHITELEY: And I presume the manufacturer considers that until the new type comes substantially near to the sale of the old type, it still requires special promotional activities. So, I don't think my suggestion envisaged any abrupt cutting off point.

MR. MARQUEZ: No, a transition.

MR. WHITELEY: Yes.

MR. FAVREAU: I would like your views on what was suggested in Toronto. The general contention, and you have repeated it today, is that as there are few types of price-cutting -- progressive, protective and predatory -- there is

some difficulty in appraising the exact nature in each case, and it should be left to the discretion of the manufacturer to decide when the price-cutting is so predatory or really predatory to the extent of justifying him in cutting off supply, and it has been suggested to us that legislation might be passed whereby a manufacturer could not or should not cut off his retailer from supply until after an application before some kind of official board, and he has to the satisfaction of that board established that, in the particular case concerned, or with respect to the particular policy followed by this retailer, the price-cutting has been or is predatory. Would you care to comment on that particular suggestion?

MR. SAMIS: As we have suggested, and as has been suggested in this report of the Restrictive Trade Practices Commission at page 6, just below the middle of the page,

"This group of definitions is by no means exhaustive but it indicates some of the major difficulties encountered in the attempt to distinguish between price reductions that amount to 'loss-leader' selling and those that arise in the course of normal merchandising operations."

We subscribe to that 100%. We think that because the matter of intent is involved it is not possible

to legislate against predatory price-cutting, and by the same token any commission set up could never reach a decision as to whether any particular case was actually predatory price-cutting.

MR. FAVREAU: That is not an objection.

I am stating to you the suggestion made. How can a manufacturer, with due knowledge of costs, decide that in one particular case the price-cutting is predatory if a board or a commission, which of course should be composed of experienced men, could not exercise its discretion to the extent of not being able to distinguish what is, in the main circumstances submitted, predatory price-cutting and what is not? What greater advantage has the manufacturer, and what greater facility has he in deciding exactly the same issue?

MR. SAMIS: He is much closer to the picture. There are only three people -- the manufacturer, the distributor and the retailer -- who know the reason why a certain price is at a certain level, and in any representations before another outside authority, you may state it is one reason whereas it is some other reason. Unless you are exceedingly close it is hard to ascertain. You know his stock position and his credit position, and you can guess why he made that reduction. It is not possible for a board to determine those things, in my opinion.

THE CHAIRMAN: In your brief you are referring to predatory price-cutting. Our inquiry is directed

to be into the field of loss-leaders. I will just make it clear that your definition of predatory price-cutting includes some things which are certainly not loss-leaders. Your first class certainly is not loss-leaders, because you say they are making money on the sale of the article; and in the second class you say it is profitable but not on those articles, but because they sell others. That is what is generally meant by loss-leaders. Loss-leading matters we are specifically asked to inquire into, and other phases of price-cutting which, at the moment, are perhaps more serious.

MR. SAMIS: We did not attempt to define "loss-leader". We suggest, sir, that the two kinds of predatory price-cutting which we have enumerated are generally found together in any individual price-cutting, and it is very difficult to distinguish between them, and where loss-leading is included -- our conception of it -- within those two kinds of predatory price-cutting, it is possible there is something which is not loss-leader.

THE CHAIRMAN: I think your first class really comes in the category -- a man cuts prices very seriously, and by so doing he is actually making a lot of money, but he is not loss-leading. You cannot say he is selling at a loss, which is involved in any real definition of loss-leading, but he may be doing something very detrimental to the business generally, and that is

your contention. I just want to point out your brief goes rather beyond what the reference to us was.

MR. MARQUEZ: I might say, in reading through the Director's Report there are many, many instances where the question of investigation of loss-leaders merges into the type of predatory price-cutting we are talking about.

THE CHAIRMAN: It is going to merge into other things too; a number of those things are related.

MR. GERIN-LAJOIE: It may be of interest if I put another question. On page 5 you insist on the use made of nationally known brands for the purpose of passing on lesser known brands: Do you think it would be of any help if legislation was passed prohibiting such advertising practices as those you refer to on page 5 of your brief at paragraph 1?

MR. MARQUEZ: It may be possible there is such legislation, but I would venture to suggest it is awfully difficult. Again, intent is involved, and in the exhibit that we have attached there are obviously many instances where two or three major brand names are splashed across the top, and if you are not careful you might almost assume that the appliances illustrated belong to those particular brands, when in fact it is at least doubtful that they do. I don't know how exactly you would word legislation;

I suppose it is possible to attack that particular stage where the thing is not labelled with the brand, but it is so set up that the inference is there.

THE CHAIRMAN: They have some legislation in the United States dealing with false representation which leads to quite a bit of litigation. Unless you have something further to add, that will complete the presentation. We are indebted to you for a very thorough discussion.

---A short recess.

Delegation from: THE HARTNEY COMPANY LIMITED.

Represented by: Mr. I. S. Isaacs,
President.

Mr. Bernard Isaacs,
Vice-President.

THE CHAIRMAN: We will proceed with the reading of the brief and any discussion or comments you wish to make.

MR. I.S. ISAACS:

"LOSS LEADERS IN THE APPLIANCE FIELD"

"If the term 'loss leader' may be applied to any merchandise bought at regular invoice prices and sold to the consumer at a price that does not include even the barest cost of doing business in that particular field, then in our opinion Television and appliances which are being offered daily by many questionable merchants at not more, oftentimes less than 10% gross mark up on invoice price, are being sold at a loss.

"In recent times few businesses have been as hard hit as the T.V. and appliance line. When one considers the terrific consumer appeal that a brand new miracle such as Television must have on the buying public, at first sight this is, a condition that is difficult to

understand.

"Appliances have a durability factor, in this they differ from impulse purchases, such as food or cigarettes, these latter articles consume themselves almost immediately and are in constant need of replacement.

"Appliances have in the main not only a long life expectancy, but a very definite sales appeal, such as economy and better health in refrigeration, time and money saver as in the case of a washer. Education, pleasure and entertainment as in radio and Television.

"It is our contention that the constant stressing of these attributes by manufacturers and advertisers alike has created not only the desire of ownership but a standard of value has been built up in the minds of the consumer that gives pride of possession for a brand name appliance, this is being destroyed by the 5% and 10% cut price dealers.

"That the continual offerings of these name brand products WITHOUT THE PROTECTION OF PRICE MAINTENANCE at a variety of prices each one lower than the other (a) tends to depreciate that standard of value which the manufacturer has striven

to build up (b) in many instances defers buying, for the user is faced with the feeling that the last advertised price is not the lowest . . ."

I would like, sir, you to take particular note of that clause.

". . . (c) that the dependable dealer who has built his business on the premise that a happy satisfied customer is a prime necessity and therefore follows his sale through with proper and adequate service, is definitely overcharging them, because if such dealers' price is higher in one article the assumption is - it must be too high in everything."

In spite of that clause, sir, I have noted in the brief that was submitted by the Canadian Association of Radio and Television Appliance Dealers, and also the Ontario Association of the same, that they touch on the aspect of service, and they say -- and I quote: "One aspect of the current situation is illustrated forcibly by the number of telephone calls that have been received from the buying public at the offices of our Association. Invariably these telephone calls originated from purchasers who have bought equipment on which service is important and who on application to their cut-rate dealer for service are informed that the purchase price was so low that the dealer is not prepared to undertake the

provision of any service. This regrettable development from a service standpoint is also highlighted in another way, and that is the increasing number of dealers who have gone out of business as a result of the competition price war in which they have been engaged being obligated to meet competition. This means that very large numbers of people who have purchased articles from such dealers are deprived of their normal source of service on a line of merchandise which in general does require service."

I now continue, sir:

"IT IS CONTENDED THAT THROUGH THIS LACK OF STABILITY BROUGHT ABOUT BY THE REMOVAL OF PRICE MAINTENANCE A CONDITION IS CREATED THAT DOES AND WILL CONTINUE TO DIVERT TRADE AWAY FROM OLD ESTABLISHED RELIABLE FIRMS TO A TYPE OF 'CATCH A PENNY' DEALERS WHO GRASPS AT AN OPPORTUNITY TO CASH IN ON TODAY'S BUYING DESIRES AND GRABS A FAST BUCK WITHOUT A THOUGHT OR CARE OF THE TO-MORROW."

I would like to elaborate on that at the moment. It is my sincere belief, sir, that perhaps a condition has been brought about very likely right after the close of our second world war; there was a number of young men who came back from the front who had some Government gratuities coming to them, and quite a lot of those young men engaged

in some type of endeavour. It is a fact that for a very small amount many of these individuals across the face of this country did engage in the sale of appliances. They were able, sir, with perhaps a very, very limited stock and a number of manufacturers' catalogues to open up in a very unpretentious manner little firms of one nature or another in which they sold appliances, and in which generally they did quite a fair job, particularly in those appliances which were in short demand (sic). I refer at the moment to the washing machine industry.

MR. WHITELEY: Do you mean short demand or short supply?

MR. I.S. ISAACS: I am sorry, you correct me; I meant short supply. I refer to the washing machine industry. I know there was a very short supply at that time, and therefore there was the desire on the part of the customer to buy a washing machine. That is point No. 1. I would like to point out, if we progress down through the intervening years until today, we will find out that many of these dealers did not do so well. It was a tough road. They sold in an orderly fashion one way or another, and perhaps made themselves a living of some degree, but when television came into being there was a terrific compelling purchaser desire in the television field. That, coupled with the breaking down of price maintenance, was not natural --

that that type of dealer should cash in on that consumer demand, and that has been going on at a very rapid rate up to the present time.

"I. we go back over the pages of yesterday, we find from its earliest inception that the radio business offered an opportunity for growth and profit, for manufacturer and dealer alike, selling was competitive and healthy in an economy of spending dollars and an earning capacity much below that of today, consumer prices were considerably higher, for a first class radio combination than for a television combination today (we recollect selling an RCA Victor combination radio at \$1800.00"

THE CHAIRMAN: Not very many of them.

MR. I.S. ISAACS: we sold a few, sir; it is amazing, that is true.

THE CHAIRMAN: The market would be rather limited at that price?

MR. I.S. ISAACS: That is true, but the point I would like to bring out is that that radio combination of \$1800.00 is much inferior in performance and tone quality to a radio combination selling on today's market for \$179.00 -- and that is with price maintenance.

"During this period which lasted from 1924 to 1930, orderly selling prevailed,

manufacturers' established name brands and reputations, dealer outlets grew in importance, the consuming public had pride and pleasure in their purchases, and an orderly saturation point was arrived at over a period of years, when it is our belief culminated sooner than it should have, principally brought on by the stock market debacle of 1929.

"IT IS OUR CONTENTION THAT THIS PROFITABLE CYCLE COULD NOT HAVE LASTED A FRACTION OF THESE YEARS HAD THERE EXISTED - NO PRICE MAINTENANCE - WHICH WE ARE NOW UNFORTUNATELY FACING."

I would like to stress that, sir.

"In our larger Canadian cities 'holes in the wall' at a gross profit of 5% and 10% are syphoning off millions of dollars in the T.V. and appliance business. Such dealers usually out of higher rent sections, with little overhead including a distinctly lower paid staff, cutting corners here and there can and do undersell the established dealer.

"Numbers of instances have come to our attention in Montreal and one in particular in Toronto with a very limited staff which does a turnover in millions in T.V. and refrigeration. It is our conviction that due to the appeal of

television this same business would have been done at a fair margin of profit by responsible dealers putting into circulation due to this profit margin many additional spending dollars. These dollars create an endless chain of other spending dollars that filter into many and varied channels of trade.

"It is doubtful however, if the loss which has fallen to the lot of reliable good-will building organizations by the practices of these cut rate dealers benefits the general economy of our country at large for (a) a better paid staff has more spending dollars to circulate in their daily living expenditures (b) a saturation point is being built up much faster than would have been created by more orderly selling at a fair mark up (c) the low margin on which the 'catch a penny' dealer operates in many cases from 5% to 10% above invoice tends to create much 'under the counter' selling. His accounting methods are mostly loosely run, much is sold for cash without proper bookkeeping records; this tends to a condition in which the responsible dealer to hold his trade and compete is forced to do business at a loss. It would seem that if business is forced to continue on such

a basis it is a perfect setting for tax irregularities and that much may be lost to our federal treasury by this method of operation.

NO DOWN PAYMENT

"Recently there has been started by a few of our larger stores a fiercely competitive battle for the public's patronage spiked by a policy of no down payment which publicity our metropolitan dailies have played up aplenty even though as in the case of Quebec, there still exists on our statute books a law which makes the selling on instalment illegal unless fortified by at least a 15% down payment: (one day should a business recession of any magnitude occur it may be found that the lien contracts covering these sales will not stand up in law), but this is neither the time nor the place for this discussion.

"This type of advertising and selling has of course broken out all over. Smaller dealers by the score have been forced to adopt this as an accepted method for attracting sales. It is our belief this type of selling effects our general overall economy for in many cases in the long run the customer pays a higher price for his purchase due to the fact that a large portion of these sales

are handled by finance companies whose finance charges are necessarily high and that furthermore due to this method of selling many unthinking buyers are lured into making multiple purchases and overextend themselves into contracts that they may find difficult one day to pay for.'

MR. FAVREAU: The Act you just spoke about does not make the sale legal. It makes it final and binding on both parties if you don't follow the regulations. Thereby the seller will lose the privilege of the conditional aspect of the sale -- it will become a final sale.

MR. I.S. ISAACS: Yes; as a matter of fact, sir, I don't think that should be part of the brief, but I wanted to include it.

"REMOVAL OF PRICE MAINTENANCE

"It is our contention that through the removal of price maintenance a new order of things is being created and we submit the following as evidence of this statement.

"Eliminating imports, it must be granted that in order to get 'name products' into retail channels or distribution they must first be manufactured. At this point a price is fixed by the maker which enables him to sell his product to

the retailer at a sufficient mark up to show an operating profit and in the case of any well managed business some reserve for depreciation. During price maintenance a resale price was then fixed by the manufacturer at which his product should be sold to the consumer. This resale price in a general way took into consideration the normal costs of the retailer's doing business in order that he might be able to pay his bills after the payment of all sundary overheads. In this connection, it is contended that if the manufacturer sets too high a resale price on his product, competition among factories themselves will very soon take care of this situation. On the other hand if our retailers in this country have been waxing unduly rich, and it is doubtful if a cross section of the financial statements in the hands of Ottawa would reveal this situation - then a very brief period would elapse before a surge of retail competition would split up this business, so that the profits of no one firm would be unduly great.

"In each of our cities from coast to coast, there has been established the fixed pattern of a main street or shopping area usually located in the downtown section where reputable merchants have

over the years built up a name for reliability and fair dealing. The premises occupied by these merchants usually bear the heaviest rentals and thereby add much to the enrichment of municipal property taxes. These downtown merchants are finding it impossible to merchandise their wares on the meagre 10% or 15% gross mark up oftentimes less which appears to be the order of the day since the elimination of price maintenance. A survey would easily establish that the bulk of these cut price merchants are located in holes in the wall far removed from the higher property value premises of our cities. It is our contention if this new order is to prevail, and due to loss leaders this trade is syphoned away from the downtown merchant, it will not be long before the customary 'to let' sign will adorn many of our main street premises. Existing rentals will be a thing of the past, buildings and stores will become neglected and shabby, property values depreciate, and much will be lost in municipal taxes."

Now, this is important.

"Appliances either electrical or mechanical, break down from time to time and require expert service and attention

and whilst in the case of name brands some type of superficial service may be obtained from the maker it has been our experience over the past 35 years that the manufacturers' service must be augmented by a good dealer service organization, if the retailer is to earn and hold the good will of his customers, as in our own case, our service department is a direct charge against the operation of our business. It is impossible for the loss leader type of dealer to maintain such a department.

"If it was our government's thinking that by the removal of price maintenance they would lower prices to the consumer, if it can be established that both factory and distributor are making undue profit, then it is our contention that instead of tearing down the good will that a manufacturer has built up for his trade name, as nothing will do this quicker than a variety of retail prices the last quoted of which may not be the lowest; LET US STILL RETAIN PRICE MAINTENANCE, but let factory and retailer alike cut gross mark ups in order to provide the consumer with his product at a lower price. However, in this respect it should not be overlooked that the profit motive is the spark plug of business. If through profit, business is permitted to grow, earnings are

plowed back into further expansion, this benefits not only dependent firms but gives additional employment to countless others in many and varied industries.

"Finally do not let us forget that due to our system of taxation our government is a senior partner in the profits of every business operation in this country - business must either profit or eventually become bankrupt. Surely it is to the advantage of all concerned in this great country of ours to see that business is kept sound and healthy."

That, sir, is the brief.

THE CHAIRMAN: Do you wish to add anything at this time?

MR. I.S. ISAACS: well, yes sir; I had mailed a copy of this brief to the Ontario Radio and T V Association, and a day or two ago they sent me a copy of theirs I did quote one clause from it, and I would like to quote another two I have got here:

" ' Dealers' problems': At the present time many buyers have a problem on their hands in that they purchase merchandise at or near the suggested list price. This same article is advertised today at a much lower price than it pays them, if they bought it on credit terms, to

return their purchase to the dealer and
buy a new model from the cut-rate
dealer."

I pause for a moment. In Friday's Toronto Telegram, Friday, June 4th, there was an advertisement of the Danforth Radio Company which advertised a 17" G.E. set which cost them \$139.00; they advertised it for \$199.00. Well, that is about 30% gross on the sale; but, mark you, sir, in the same paper, two or three pages in advance, the Consumer Electrical Company advertises the self same model at \$154.00. I have noted another extract from their brief:

"Under the present Combines Investigation Act any dealer is permitted to football any product to the detriment of the manufacturer, dealer, and dealer's customer. The cut-rate dealer advertises much of the merchandise sold at a very low figure often only to get customers into his store with no other thought than to sell the other manufacturer's merchandise. This has a bad effect on the purchaser who already owns a similar model, also on the person who goes into the store with the idea of buying a certain line and then finds he cannot even see them as the dealer never even had a franchise to sell the article advertised."

I would like to dwell on that for a second. We have in this city -- and I do know it exists in other centres -- a questionable type of advertising dealer. We who are in the trade, sir, know whether certain models are available or not, and frequently we see in our daily newspapers a model which has long since become extinct, removed from the manufacturer's catalogue, removed from his inventory, and is non-existent, and yet that model will be advertised day after day by certain unscrupulous dealers at a very low price, far below the suggested list price of the manufacturer. But, it is chained to the floor; you can't buy it.

Finally, clause No. 4: (reads relevant extract).

That, sir, is all I have to say.

THE CHAIRMAN: Does Mr. Isaacs Jr. wish to add anything?

MR. BERNARD ISAACS: Not at this point, sir.

MR. GERIN-LAJOIE: I have a few questions, Mr. Isaacs. Referring to the first page of your orier, I wonder if you would have any evidence showing that consumers are suspicious of the quality of brand-name appliances when they are sold at reduced prices?

MR. I.S. ISAACS: When we discuss appliances, sir, there are common to the appliance situation a number of varying models -- models changed from time to time. I have known

manufacturers, who I cannot mention, who have produced certain models that were not good -- some innerent flaw existed in these models, and we ourselves as dealers unconsciously and unwittingly have at times sold models which were constructed by a reputable firm and yet there developed in those models some fault. If you had been a purchaser of one of those models you would have had trouble with it, not because we wanted you to have trouble. I contend, sir, that, to take a hypothetical case, you might come into Hartney's and buy such a model in good faith, and then find you were having plenty of trouble, and then see that same model constantly being advertised at a variety of lower prices, and you would lose faith, perhaps, then.

MR. GERIN-LAJOIE: You don't mean, at the bottom of page 1, that when a brand-name product is sold with a 5% or 10% reduction that it is really making consumers suspicious of the brand-name product.

Mr. I.S. ISAACS: I am not discussing a 5% or 10% reduction. I was discussing in that brief a 5% or 10% gross mark-up over invoice price.

THE CHAIRMAN: That is what you mean at the bottom of page 1?

MR. I.S. ISAACS: Yes sir.

THE CHAIRMAN: Because I took the same view as Mr. Lajoie.

MR. ISAACS: Oh, no; 5% or 10% mark-up over gross invoice price.

THE CHAIRMAN: It is not a 5% cut?

MR. ISAACS: No sir, it is a 5% gross mark-up.

MR. GERIN-LAJOIE: Referring to the top of page 2 of your brief, regarding the many instances in which people defer buying, would it be your contention there has been a decline in production of appliances since December 1951 when the new legislation was passed?

MR. ISAACS: I don't think that could be proven in fact, sir, because you have the figures. I don't believe that is my contention exactly. I think we can interpret that another way. Let us say -- and rightly so -- there has been a very great over-production; whether that has been due to a lack of orderly consumption or not, I don't know, but I do know that there exists on the floors of the factories of the various manufacturers in this country and in warehouses a lot of undigested appliances. Whether the variety of price had anything to do with that, I do not know.

MR. GERIN-LAJOIE: I am looking at page 3 of your brief.

MR. FAVREAU: In that you are proceeding from page to page, there is one thing I have to ask about reputation of a product cut in price: It is generally contended that when dealers start cutting the price of a product it is likely to

depreciate in value in the minds of the buying public.

MR. ISAACS: I think so, yes.

MR. FAVREAU: But what happens in the case of a nationally advertised product where the manufacturer himself decides to make a nation-wide sale and to reduce drastically the price of his own product; does he lose then the confidence of the public?

MR. ISAACS: I don't think that is a parallel case, because in that particular instance you would find that the manufacturer, if we had not price maintenance, would have fixed that price and he would have given the retailer an opportunity on his discount basis to have made some kind of gross mark-up on that article, and that it would generally be conceded by the buying public that for some reason or another a new price prevailed on that product; but that is an entirely different situation from what we have today. We have today 50 prices on the one article.

MR. FAVREAU: How does the individual purchaser know that -- that in this instance, for example, the cut is really coming from the manufacturer and not from the dealer? I mean in the case of some of those such as Danforth Consumers Appliances. In each case we had to ask the person testifying before us, "On this particular model was that your reduction or the manufacturer's?", and we could not identify it very easily.

Whether the cut is made by the manufacturer or the retailer is something the consumer does not know.

MR. ISAACS: I can answer that as a retailer. I do know that when a model such as that particular one mentioned, although we do not handle that line ourselves, but I am familiar with it -- it is a G.E. product, 17" television set -- and there was given to the dealer an opportunity to buy that set at \$139.00. It was a new price. What happened was that the factory was overstocked in that model, and there is a demand today for 21" screen, and the 17" screen is getting into the dust cart, more or less. The manufacturer's suggested list price was \$199.00 which the Dufferin Radio people apparently subscribed to, and then along comes this other fellow and he says \$154.00. Somebody else might have said \$168.00 or \$141.00 -- it could have been anything. To me, sir, the confidence is broken down. I don't know, sir, whether I have been able to bring out what is in my mind, but it is this: I am not an economist but I do believe that the general economy of this country is better served if there is a profit all along the line, if that profit is not an undue one. If it is an undue one, then I figure competition will rapidly take care of that situation. You gentlemen know it because you are next to the picture, I don't believe the financial statements at Ottawa would disclose too much of an undue profit.

in the appliance business. I do know in our case -- and we do not claim to be cut-price dealers -- that if we depended on the appliance business for the maintenance of our business, we would not be in business; we would close our iron door because it would be a physical impossibility to do business on the basis on which we are asked to do it today. I listened intently to the last speakers from Northern Electric, and I did think that while they presented their case most admirably, and I was really surprised because I am a retailer purely and simply, and I don't know, and I am perfectly sincere in making this statement how strongly the manufacturer was inclined to price maintenance. I am serious, because I know that he is under the guise of, "well, we cannot maintain the price". He has been sloughing off on our present day under-consumed market a tremendous amount of merchandise when we, as dealers, were saying that there is no more price maintenance.

I would still like to come back to the point I desire to make and that is this: There is for name brands a certain goodwill, a certain standard of value which is created in the mind of every consumer. There are some of our larger firms who have private brands of their own: You know them and you read of them in the newspapers, and still I have it on very credible authority, except one firm, that all of those firms would like to go back to the time

where they could profitably sell brand-name articles. They are still selling name-brand articles but much of their trade has been taken away.

MR. GERIN-LAJOLLE: Referring to page 3 of your brief, I would like to have a clarification there; I wonder if you are really suggesting that lower prices do not broaden the market generally -- you talk about the saturation of the market; would that come more quickly, without price maintenance?

MR. ISAACS: I would like to answer that we are dealing now with appliances, and there is a certain given life that has been built into an appliance. In some cases it is almost a lifetime, in other words it is a long period of years. I don't think that in fairness the appliance business can be compared to any article which consumes itself immediately, and is gone, and must be replaced again and again and again. Now, there is in my thinking a saturation point; it increases with the years; it increases with the amount of merchandise that is manufactured and distributed by the factories and dealers alone, and it gets to a point, provided, as I said, there is a long life in the product, where the sale of that product becomes more and more orderly, and continues to diminish. I believe, sir, that that is probably one of the troubles in the television business of today. I do not for one moment think that -- I call them 'one fly-by-

night dealer", for the want of a better word -- I do not think for one moment that the fly-by-night would decide, for example, he was going to go into the selling of chairs or sofas or beds, or some such line that is sold in a very orderly fashion. He is grasping at a straw; he is an opportunist purely and simply and is syphoning off the channels of what might be orderly trade, and I still maintain that business would be done to some 5% or 10% above invoice -- and I want to get that point over -- by those legitimate dealers who know what the cost of doing business in an orderly fashion is; it would be done at a profit to all concerned.

MR. GERIN-LAJOIE: Is it your suggestion that cutting prices is done only by fly-by-night dealers, as you call them?

MR. ISAACS: No sir. I did not make that statement. I say 5% or 10 percenters -- there never was, even under so-called price maintenance a time when you or any other man could not buy an appliance at lower than prescribed manufacturers' price. However, I will say that it was not as pronounced as it is today.

MR. GERIN-LAJOIE: So you are referring here -- you are complaining, in I may use that expression, only about those dealers making a gross profit of only 5% or 10%, and not cutting prices generally speaking?

MR. ISAACS: No sir but I contend one thing leads to the other. There is no end to it. As was explained in the case of the radio in Friday's Toronto paper, one was \$199.00 and the other \$154.00. There is no price maintenance, so he says. "I will sell it for what I like", so he makes \$15.00 gross. In the confines of the City of Toronto he cannot deliver that television in a truck under \$4.00, he cannot put it into a truck and take it to a house under \$4.00.

MR. GERIN-LAJOIE: At the bottom of page 3 there is something I am not sure that I understand:

"Numbers of instances have come to our attention in Montreal and one in particular in Toronto with a very limited staff which does a turnover in millions in T.V. and refrigeration. It is our conviction that due to the appeal of television this same business would have been done at a fair margin of profit by responsible dealers putting into circulation due to this profit margin many additional spending dollars. These dollars create an endless chain of other spending dollars that filter into many and varied channels of trade."

Do you mean that, generally speaking, business should employ more people than it need to do its business?

MR. ISAACS: Than it need?

MR. GERIN-LAJOIE: Yes.

MR. ISAACS: No, I don't say that at all but I do believe this: I do believe that actually, if you can buy an article for \$100.00, let us say, and in that \$100.00 there was a very, very meagre percentage left after the general operation of the business that sold it to you, and that your friend bought a similar article for \$110.00 or \$120.00, and that that same money was put into circulation, except that it was enhanced by 10% or 20%. I am of the opinion that the general economy of this country would be improved. I don't think in the final picture the consumer has saved anything, because in my thinking it goes past the point of original sale, and goes into the variety of channels of distribution where you and I and the other fellow's family is employed, and therefore I think there has been no saving.

MR. GERIN-LAJOIE: well, if for the additional 10 or \$20.00 a person could get something else in addition, why not get it?

MR. ISAACS: He can in another way, because the individual that is going to sell you that on a 5% or 10% basis eventually will wind up to the point where he cannot pay his bills and become bankrupt, because I believe he is cashing in on a momentum of an article in demand. When it comes down to ordinary selling, I don't think he can do sufficient business to

stay in business and by that time he will have acquired a lot of liabilities. It is happening right now.

MR. GERIN-LAJOIE: Well, you are just envisaging a situation where someone is making a fair profit for a very short period of time?

MR. ISAACS: Yes, sir.

MR. GERIN-LAJOIE: There is something which I find of much interest at the bottom of page 6 regarding the value of property in downtown Montreal, and the changing face of the city: Isn't it up to the public to decide that it should shop at one place or another, and isn't it the law of evolution which we should admit that possibly the region may get depreciated, and shops might go to another place in time and that we should not try to have rigid rules or laws to protect a state of affairs which might not apparently be to the greatest interests of the population? For instance, if it is in the interest of the population that the trade on St. Catherine Street west move to St. Laurent or Dorval, why not do it?

MR. ISAACS: I am not opposed to that. We ourselves have branches in many of those sections. Might I point out something which I believe was touched on in another way by the last speakers. It is this: Oddly enough, we have branch stores in neighbourhoods where rentals are not nearly as high as on St. Catherine Street, but actually

I want you to realize that under orderly selling the customer would pay no more money on St. Catherine Street for his article than he would pay in an out-lying section of the city -- not from us only, but from any reputable merchant. The reason is this: That our rent is necessarily higher on St. Catherine Street and is predicated percentage-wise on our turnover; our turnover is higher. When you go into the lower rental areas you don't do as much turnover, but your rent is that much lower but you cannot sell in an orderly fashion any cheaper there than you can in St. Catherine Street.

MR. GERIN-LAJOIE: But you believe we cannot have such an orderly state of affairs if I may say so, just by the natural law of supply and demand -- that we need a policing of the manufacture in this case?

MR. ISAACS: I would rather not use that word. I feel again that the manufacturer has built goodwill into his product and it is rather the goodwill that is being torn down and destroyed. I can see a time when there won't be any more brand-name articles. Maybe that is what the Government wants -- I don't know. Perhaps that could take place easily with any other person selling X Y Z brand where the price is unknown and he puts whatever price on that is necessary to attract his trade.

MR. GERIN-LAJOIE: Actually, on that point

now would you explain that people selling at very low cut-prices continue doing business?

MR. ISAACS: People selling at very low cut-prices?

MR. GERIN-LAJOIE: Yes.

MR. ISAACS: Are you confining your remarks to the appliance business?

MR. GERIN-LAJOIE: Yes, let us confine it to this field.

MR. ISAACS: As I said a moment ago, it is because they are cashing in on the desires of the moment. It is more evident in television than in anything else.

MR. GERIN-LAJOIE: Well, would you think that with time, in a year or two or three, the situation would redress itself?

MR. ISAACS: Yes, if we can get enough of these fellows bankrupt.

MR. GERIN-LAJOIE: So after a period of two or three years, without any price maintenance we could get back to a normal orderly state of affairs?

MR. ISAACS: Provided we bankrupt enough of these people, yes sir.

MR. GERIN-LAJOIE: That would happen normally in your hypothesis, because you take for granted -- if I understand you -- that they do business and make profit just on account of the desire of the moment for a certain particular product?

MR. ISAACS: I would think in the main that is largely the case out of course incidentally they sell other things along with it. One other thing, sir: This so-called orgy of price-cutting please remember it is only in the main taking place in brand-name articles. I submit if you went into any department store and purchased a suit or clothes or a pair of shoes, or whatever it would be, you pay that firm a fair mark-up for the purpose of doing business. You have to, or they won't be in business.

MR. GERIN-LAJOIE: May I ask this question: It is a question, not an opinion: Isn't it true that department stores, for instance, will sell a particular product bearing the store's own brand at a lower price than possibly the same article made by the same manufacturer but bearing the manufacturer's brand-name?

MR. B. ISAACS: I don't believe, sir -- it may be so in some cases sold at a lower price but that does not necessarily mean they are working on a lower margin of profit. I rather think the contrary is true, that they are working on a little better margin of profit on their own particular brand, such as our large department stores have, than a name-brand. Otherwise, why bring them in in the first place? After all, in the appliance field R C A Victor or Westinghouse do the advertising for them. Therefore, it is partly sold when a person comes into the

store. If they handle one of their own products they must do the advertising themselves. You may find a shirt, for instance that would be less expensive than a brand-name item such as B.V.D. or Arrow, and these are manufactured and might appear to be as good quality, too. They might be made up by a certain factory for a department store either during a period of time when they are not too busy and will make them at a lower price in order to keep the factory going, or they may calculate the increased volume of business which they have obtained by manufacturing this particular brand-name for that department store can be maintained at a lower price, and would appear on the shelf at the lower price. But I believe in fact the name-brand article, that is the article that the retailer is selling with his own name on, on that particular article he is working on a larger margin of profit than on the name-brand.

MR. GERIN-LAJOIE: Am I right in saying that the retailer in that case is spending more money in advertising his own product?

MR. B. ISAACS: I would say that in order to create the demand he would have to spend more money in advertising, because in name-brands the advertising is done for him.

MR. GERIN-LAJOIE: Let us take a name, Eaton's in Montreal advertise a radio "Eatonia"; is it your opinion that Eaton's spend more money on advertising Eatonia radios than they would on

advertising in their daily page Westinghouse or General Electric?

MR. B. ISAACS: I misunderstood that. Either they would have to do that or offer it at a lower price, but because they may be offering it at a lower price does not mean they are working on a lower margin of profit.

THE CHAIRMAN: You mean the manufacturer in selling these goods without the manufactured brand-name on them, selling them to the dealer, he sells them to him at a lower price?

MR. B. ISAACS: That is correct.

MR. I.S. ISAACS: I would like to qualify that statement just a little.

THE CHAIRMAN: We are not suggesting that always happens.

MR. I.S. ISAACS: I don't know that I would agree with my son in that entirely. It is a matter of opinion. I do agree with most of what he said but I don't think the manufacturer necessarily makes more profit on his branded article.

MR. FAVREAU: It has been proved to us.

MR. I.S. ISAACS: It is possible.

THE CHAIRMAN: He has spent money on the branded names but not on the others; he has advertised his branded name but not the others.

MR. I.S. ISAACS: Yes, that is right.

MR. GERIN-LAJOIE: I would like to ask you if, before the new legislation regarding price maintenance, before the present situation,

if you happened to grant generous trade-in allowances in competition with other retailers -- let us say you were to sell a radio and trade-in another one.

MR. I.S. ISAACS: We have made it a practice in our business to deal fairly with the customer and also with ourselves. Many times we have criticized our salesmen for allowing what we felt was an undue trade-in allowance, and have even taken that sale away from them and refused it. We try, and we are successful, in allowing as a trade-in the price for that particular old article in which we can sell it in our trade-in store after reconditioning. We don't try to make a profit, but we allow for service and reconditioning of the article, and then we do not allow a larger trade-in, in no case do we ever allow a larger trade-in than we can get for that reconditioned article from some customer.

MR. GERIN-LAJOLE: To your knowledge, is it the practice, say, in Montreal, in the appliance business to give large allowances, and even allowances for trade ins, which would be of no use to the dealer before the present legislation?

MR. I.S. ISAACS: Yes and I think that brings me back to what we talked about just a few moments ago. At no time, even under price maintenance, was there not price-cutting. I did make that statement, that there never has existed a 100% tight air-proof time when you could not buy

an article at less than the price.

the chairman: Do you think it is possible there ever could be?

MR. I.S. ISAACS: I don't believe that we need such protection.

THE CHAIRMAN: But do you think it could ever work 100%?

MR. I.S. ISAACS: I don't think -- like an honest man, I can't answer the question.

THE CHAIRMAN: You mean it would take a long time before you found something that somebody could not beat?

MR. I.S. ISAACS: That is correct.

MR. GERIN-LAJOIE: I am looking at page 7 of the brief, the middle of the last paragraph:

" . . . let the factory and retailer alike cut gross mark-ups in order to provide the consumer with his product at a lower price."

MR. I.S. ISAACS: Will you read on, though, sir, -- the next sentence

MR. GERIN-LAJOIE: "However in this respect it should not be overlooked that the profit motive is the spark-plug of business."

MR. I.S. ISAACS: Yes, you must couple that with it.

MR. GERIN-LAJOIE: But I wonder how price-cuts, such as those envisaged here, could be made to that extent, to the extent apparently envisaged

here, with price maintenance?

MR. I.S. ISAACS: Well, perhaps I did not phrase that correctly; perhaps it is not clear. The point I tried to bring out was this: I do not know why our Government saw fit to remove price maintenance. That is something I do not know. Nevertheless, they have done so. The point I would like to bring out is this: If it was the general thinking on the part of our Government that by the elimination of price maintenance they would lower the price of the article to the consumer -- and with all due respect I suppose ---

MR. GERIN-LAJOIE: In this respect you might like to know that three or four countries have already followed the example of Canada since we have passed this legislation, and this might show that apparently there is a real foundation for the purpose of a good economy.

MR. I.S. ISAACS: I would not doubt that, but that does not prove they are right. Only time will tell. However the point I wanted to bring out was this: If it can be proven that the retail price of an article at the consumer level is too high, if the feeling is that that price should be dropped, that it is too much money, then the import of that statement is purely this: Perhaps it can be discerned that the manufacturer (a) is making too big a gross profit on his article as he sells it to the retailer, (b) that the retailer in turn is selling that article to the

consumer and is also making too big a gross mark-up. If such is the case, then I say that the gross profits, of course they would have to be reflected in the net profit, and if the net profit of this industry is too high -- and Ottawa can easily determine that from a cross-section of our balance sheets -- perhaps some method could be arrived at where a lower mark-up could be made. But I say, if it is humanly possible to do that, I am for it, I am for it. I am not for undue profits.

MR. GERIN-LAJOIE: You mean controlling profits?

MR. I.S. ISAACS: If there was some way it could be done yes sir.

MR. GERIN-LAJOIE: By a Government Board?

MR. I.S. ISAACS: I don't know. I am not smart enough to figure that one out, but what I would like to say, is this: Don't tear down the goodwill, the public acceptance, the pride of possession, the delight of ownership that you as a customer have got in your Victor or Philco radio, because you see it is advertised now at a variety of prices and you lose that sense of pride.

MR. WHITELEY: On page 3, the last paragraph. "Numbers of instances have come to our attention in Montreal and one in particular in Toronto with a very limited staff which does a turnover in millions . . .": I presume ---

MR. I.S. ISAACS: Well sir, I don't want to mention names here -- I don't think we should -- but there are firms in our larger centres.

MR. WHITELEY: I am referring to Montreal: you think there are a number of firms in Montreal doing millions in cut-prices?

MR. I.S. ISAACS: Yes, a number. yes sir.

MR. WHITELEY: Are they all located in "holes-in-the-wall"?

MR. I.S. ISAACS: Largely, yes sir.

MR. WHITELEY: And doing millions?

MR. I.S. ISAACS: Yes. sir.

MR. WHITELEY: That is quite different from the situation in Toronto?

MR. I.S. ISAACS: I wouldn't think so; I could mention one in Toronto. He advertises; you don't have to take my word. His turnover last year was \$4½ millions.

MR. WHITELEY: That man appeared before the Commission; he told us his staff was over 40 in number.

MR. I.S. ISAACS: Well, if he can do a turnover of \$4,000,000.00 with a staff of 40 ---

THE CHAIRMAN: It was 53, I think.

MR. I.S. ISAACS: All right, 53; if you do that turnover with a staff of 53 in the retail business, you are pretty good.

THE CHAIRMAN: It depends on the price of the articles and how many you sell.

MR. WHITELEY: Is that the type of store

you are referring to?

MR. I.S. ISAACS: Yes sir.

MR. WHITELEY: 40 or more on the staff?

MR. I.S. ISAACS: 40 or less, yes sir.

MR. WHITELEY: Well, you cannot have it both ways.

MR. I.S. ISAACS: No, I didn't count their employees, but they are under 40, that is sure.

MR. WHITELEY: And they are doing millions of dollars of business?

MR. I.S. ISAACS: I would say yes.

THE CHAIRMAN: They are even smarter than the man in Toronto with 53.

MR. I.S. ISAACS: If you can get your customers to put a television set on the back of their cars and strap it on with a piece of rope and drive away, and if you can get the same customer to the frame of mind that when his television goes wrong; "Don't call me up because I haven't got a service department" -- and that is a fact despite what was said a moment ago ---

THE CHAIRMAN: But it is not true with all of them?

MR. I.S. ISAACS: Not with all, it is true with some. The trouble as I see it in the appliance field is that appliances do get out of order. We know that after 30-odd years. We maintain quite a large service department. Except in television, which is a brand new story, we have no charge per se for service. We furnish

that service gratuitously to you. Our service department over the years has not been a profitable one; it has been a direct charge on the operation of our business, but we do look after you. If you make a purchase from our firm you are going to be satisfied. In every so many cases appliances do get out of order.

THE CHAIRMAN: It is the standard practice and a good many firms do the same?

MR. I.S. ISAACS: Yes, sir.

THE CHAIRMAN: That has been argued before us, that unless certain mark-ups are maintained that kind of service cannot be provided and that service is necessary.

MR. I.S. ISAACS: It is quite true, sir. May I say that regardless of what the manufacturer says he will do in regard to service, he does mighty little. The retailer bears the brunt of that service if he is a reliable, dependable retailer and I maintain that if you buy appliances from firms who cannot give you service because of no profit, one day I think those firms will largely be out of business, and you sir, were quite correct when you said, "Could I not get service in Montreal if I had bought from a fly-by-night dealer?", and I would say yes but you will pay for it.

THE CHAIRMAN: Oh, yes, you pay for it. Thank you very much, Mr. Isaacs.

Delegation from: CANADIAN WHOLESALE HARDWARE ASSOCIATION.

Represented by: Mr. Crowder
Secretary-Manager.

Mr. N.E. Peveril,
Manager of Hardware
Division of William Stearns.

Mr. C. Goodil,
General Manager, Lewis
Bros., Montreal.

Mr. R. Miller,
Director of Purchases,
Lever Bros.

Mr. A.A. Waterhouse,
Kaverhill & Co.

Mr. E. Roy,

Mr. Hector Prudhomme,
of A. Prudhomme et fils.

Mr. A.C. Stevens,
of Sherbrooke:

THE CHAIRMAN: We have still one brief to be heard which is to be presented by Mr. Peveril. This brief is presented, I understand, by you Mr. Peveril, on behalf of the Canadian Wholesale Hardware Association, with particular reference to the Maritimes.

MR. PEVERIL: Well, the examples are primarily from Halifax area. yes.

"To the Chairman and Members

"of the Restrictive Trade

"Practices Commission -

"Gentlemen:

"As a major factor in the system of

material distribution in Canada, and as suppliers of the retail hardware industry which does a volume of business around three hundred million dollars annually. the Wholesale Hardware Distributors are grateful for the opportunity to present a statement concerning the matter with which you are presently concerned.

"While the term 'Loss Leader' may literally mean - articles or merchandise offered below cost or below delivered cost, which is purchase cost plus actual costs incurred in handling, storing, delivering etc., - the usual connotation includes much more.

"There is the practice of 'giving away absolutely free' some reputable article of value with the purchase of an article of greater value - such as giving a television set with each used car sold by a car dealer. This has the effect of decreasing the price of the major item by the value of the free gift while the television set represents, to the buyer, a premium or discount equal to the retail price of the television, it costs the car dealer only the wholesale price. The difference is the gross profit lost by the legitimate television dealer whose organization is dependent on appliance business and is

equipped to give service on such equipment.

"Then there is the personal service organization which attempts to stimulate off-season trade by offering an article, such as an automatic electric iron, at a price well below the normal retail price - usually the wholesale price at which the item is purchased. This is another case of one industry promoting its own interest at the expense of the legitimate dealers of the product offered.

"There are numerous instances of hardware items - such as kitchen scissors, carving sets, cutlery, hand tools, etc., being offered as premiums by grocery chains, manufacturers of tea, coffee, breakfast foods, detergents, margarine and other products.

"To anyone conscious of the effect of this problem it is obvious that a very large volume of business is being diverted from the hardware dealers whose combined stocks of these or equivalent products run into millions of dollars. The hardware dealer carries many items in stock for the service of his customers on which he does not expect to make any profit."

That is because there are sizes and types for which there are calls for, but his turnover is not sufficient to produce any profit.

"He also carried items on which a profit is anticipated but not realized because turnover is reduced by the diversion of trade through these promotions. For those who do not procure these products via the bargain method, the dealer is expected to be prepared with stock on his shelves.

"Not only do these promotions shrink the reasonable volume of the legitimate dealer but some of them create an impression of value or cost that is irrelevant. It would also appear that the sale prices of the products being promoted by these premiums bear no essential relation to cost if these premiums of comparatively high percentage value can be included with the products for little or no additional price. A specific instance may be found in the case of the chain grocery store in Montreal that offered kitchen scissors for a penny a pair with the purchase of \$5.00 worth of groceries on Monday, Tuesday, or Wednesday each week. These scissors, imported from Germany, cost about \$.50 a pair laid down in Montreal. Such an offer represents a 10 per cent discount on a \$5.00 order.

'Examples of 'Loss Leaders' in the normal sense may be observed quite at will but for the sake of illustration, take two from Halifax. Here, on a full page 'ad'

or a Jewellery Store headed 'Hottest Values' you find this - 'For example - Dormeyer Food Mixers - normally these should sell for \$69.95 -- \$39.95.' A normal dealer discount on this class of merchandise would be about 33-1/3 per cent but, assuming he was a big buyer and received 40 per cent - his cost would be \$41.97.

"Here is another 'ad' - a power lawn mower made by a well-known Canadian manufacturer but bearing a large chain organization's trade name and painted a different color than their stock model - \$62.50 each. The identical mower with the exception of trade name and color (Suggested Retail - \$95.00) cost the hardware distributor almost \$60.00 laid down in Halifax. He could not sell at retail himself at \$62.50, much less sell it to a dealer at a price which would permit him to be even nearly competitive; when this matter was brought to the attention of the manufacturers, the reply included the following - 'The machine advertised in is of our manufacture. This is produced under their brand name and to their own special color scheme. No reference to ...(mfr.)... appears on the machine itself'. At the time this business was placed, we were assured that they would take a normal mark-up on these

machines. Apparently, have disregarded the normal mark-up.As you know, under existing conditions, we cannot control the resale price of our products, which means that we cannot dictate to any customer regarding the price at which they can sell goods which they purchase from us.'

"These practices constitute an injustice to the hardware dealer. Because the articles so featured are usually well-known advertised brands, these conditions tend to strain the relationship between the manufacturer and his normal outlets.

"They incline the dealer toward seeking for alternative brands which can be merchandised with less embarrassment through irrelevant comparisons.

"They relegate the reputation of some highly advertised brands to bargain-counter status.

"Some serve to absorb what appears to be unnecessarily large profit margins at the expense of a class of dealers whose products carry only a necessary gross.

"It is hard to conclude that practices which have so many inequitable attributes can be considered to be in the best interest of the public as a whole. Anything which threatens the stability of the many hundreds of hardware dealers must be

suspect as regards its effect on the consuming public in general. These dealers provide a type and degree of service to millions which would not be possible if their wares were only available through the mass-market organizations in communities large enough to entice them. Hardware dealers provide employment in hundreds of communities, share the tax load and their proprietors and employees make a valuable contribution to community service and welfare. Their gradual elimination or a major reduction in their numbers would aggravate the growing tendency toward monopoly. Such monopoly would eventually lead to dictation to manufacturers by these monopolies as their buying power would represent a predominant percentage of the manufacturers' products.

We submit that the practices referred to above have been largely responsible for the increasing disorder in the process of trade during the past two years. We believe the right of manufacturers to select their channels of distribution for their products, and the right to withhold their products from any or all organizations which do not conform to a reasonably established price or service policy, would have a stabilizing effect

on our merchandising processes. Such right to the manufacturer would incur a responsibility as well, for he would have to answer to his normal outlets if and when his products were being footballed. The recognition of such responsibility should go a long way toward making manufacturers - particularly of large units such as appliances and power mowers - more careful to avoid over-production, which has not only created chaos in the early months of the last two years, but has created justifiable discontent on the part of people who paid the regular price of an article later slashed. Due consideration would, of course, have to be given to the right of distributors and dealers to dispose of distressed merchandise or dead stock.

"Although human frailties will mar any policy, we believe the above suggestion gives promise of a greater degree of orderly merchandising and ethical business behaviour than any other policy yet tried."

THE CHAIRMAN: Do you wish to add anything at this time to the brief?

MR. PEVERIL: I would just like to make reference to a couple of items; one in particular, the one about the power lawn mower. One of my

competitors in the City of Halifax happens to have the mower which is so featured, and he tells me that he is unable to sell the mowers which he has now in stock. On the other hand, I have a mower which is made by another company in Canada and they had a similar experience previous to the present legislation being passed, and one of the major companies refused to sell it at the price which they stipulated, and they discontinued selling to the mass-merchandising organizations. This year we have sold more of that particular mower, to retail at the \$95.00 price, than ever before. It is quite obvious that insofar as the relative comparison is made between the price shown by the larger distributing organization and that the retail organization has depreciated the value of that market in the minds of the public. I don't think there is any question that the company selling it at \$62.50 is not making a profit. They have, and you have probably seen figures of average costs of doing business of the different wholesalers, and the retail hardware dealers, and the department stores, and I think you will agree their average cost of doing business is greater than any of the others.

THE CHAIRMAN: Have you any information as to what this lawn mower actually cost? I am not speaking of the brand-name, but the similar article without the brand-name and a different colour. What did the manufacturer charge for those?

MR. PEVERIL: I don't know what they charged for the branded item. I do not know what they charged the department store for the one they sold to them, but they did say in their letter that they obviously did not put the normal mark-up on. As a matter of fact, that letter was in answer to a letter written by a wholesaler reporting that this company was selling it at \$69.50, and they later reduced it to \$62.50, so if they were not getting a normal profit at \$69.50, they were not at \$62.50.

THE CHAIRMAN: It is likely since they don't have a brand-name that the price charged by the department store would be lower than that charged on that brand-name.

MR. PEVERIL: Ordinarily, manufacturers selling to the department stores do not give a full jobber discount on branded names. Rather they take into consideration that the department stores require a larger mark-up than the independent dealer, and where they allow an independent dealer discount of $1/3$ they would allow the department stores 40%, but in this instance they have given them at least 50, or possibly more.

THE CHAIRMAN: They probably give a bigger discount.

MR. PEVERIL: They may have.

THE CHAIRMAN: Where it is a non-branded article, I would think.

MR. PEVERIL: But the fact they said in their letter that they did not put on a normal

mark-up suggests it could not have been very much lower.

MR. WHITELEY: In the case of this unbranded line of lawn mower, would the situation be that the department store would place an order for a quantity of these machines?

MR. PEVERIL: In all probability they would place an order for quite a quantity, but that quantity should not make ---

MR. WHITELEY: If that were the case, then, under resale price maintenance the manufacturer would have no control over the price, in any case.

MR. PEVERIL: Pardon?

MR. WHITELEY: Under resale price maintenance, if the department store bought 1,000 of those machines, they would be their property.

MR. PEVERIL: That is under the present legislation?

MR. WHITELEY: No, under any.

MR. PEVERIL: But the manufacturer has his choice of whether or not he is going to try to do business with the independent dealer, because in the identical machine, apart from brand-name and colour, is on the department store floor, and on that of the independent dealer, he is not going to sell through the independent dealer.

THE CHAIRMAN: This example you have given, in your mind, I thought had some relation to the practice of resale price maintenance.

MR. PEVERIL: If the manufacturer does,

however insist that this company put a certain price on it ---

THE CHAIRMAN: How could they? If it is an unbranded article, how could they?

MR. PEVERIL: well, he could sell it only on that condition.

MR. WHITELEY: I am not sure. You want an agreement between the manufacturer and the store.

MR. PEVERIL: But if he were permitted to control the price at which his products were sold

MR. WHITELEY: His branded products.

MR. PEVERIL: Or his manufactured products, he would not have to sell them to this company.

MR. WHITELEY: He does not have to now.

MR. PEVERIL: Well, apparently he thought he had to because they had assured him they would maintain the price, but he could not do anything about it.

MR. WHITELEY: After it reached their hands.

MR. PEVERIL: He may have been able to refuse to sell in the first place.

MR. WHITELEY: How do you relate it to resale price maintenance?

MR. PEVERIL: Only in this way; if he had not given an assurance.

MR. WHITELEY: There, then, would have been an agreement.

MR. PEVERIL: Yes.

MR. WHITELEY: And that might be contrary

to something else.

MR. PEVERIL: That is what we are suggesting, that they would have the right to make such an agreement with the people distributing their products.

MR. WHITELEY: That is quite a different thing from straight resale price maintenance.

MR. PEVERIL: What about the products they produce?

MR. WHITELEY: Well, if they are branded

MR. PEVERIL: Well, whether they are a brand-name or not, if he produces them would he still not have the right to control them by agreement?

MR. WHITELEY: By agreement, but you are suggesting something quite different.

MR. PEVERIL: But now he cannot make such an agreement.

MR. WHITELEY: If you suggest there should be room for agreement, you are suggesting something much wider than the former practice of resale price maintenance.

MR. PEVERIL: Well, that was a phase of what I had in mind.

MR. WHITELEY: You are now suggesting an agreement to fix prices?

MR. PEVERIL: To fix the price of a product which he produces.

MR. WHITELEY: Having no relationship to his goodwill, reputation or anything else?

MR. PEVERIL: No, I wasn't referring that to this man.

MR. WHITELEY: No, you are saying two people should be able to sit down and make an agreement on resale prices.

MR. PEVERIL: The manufacturer of the product with the people to whom he sells it.

MR. WHITELEY: Well, that is an agreement to fix prices.

MR. PEVERIL: Well, that is the right to control the price of his product; isn't that the same thing?

MR. WHITELEY: No, because in one case the product is branded and the manufacturer claims his reputation and goodwill is proceeding with the product; in the other case the final seller takes whole responsibility for it, and you are saying now you wish to recommend he should be able to make an agreement with somebody else as to his price.

MR. PEVERIL: Well, I am just suggesting of course it was identical apart from four letters and the colour.

MR. FAVREAU: You mean you don't need the name behind it?

MR. PEVERIL: No, not at all. They are identical in every other respect. The people who had sent them knew it to the point where they would not buy the one carrying the manufacturer's brand name.

MR. WHITELEY: He could only do it by making an agreement to fix the price.

MR. PEVERIL: If a manufacturer fixes the final retail price of any product ---

MR. WHITELEY: He doesn't do it by agreement. Previously he said, "I am supplying you with a product to sell at X dollars and if you don't sell it you may not get any more."

MR. PEVERIL: Could he not do that on a branded item?

MR. WHITELEY: No, on the unbranded item he comes in and says, "I want to buy 1,000 of these", and the manufacturer says, "Fine, I will supply 1,000".

MR. PEVERIL: Well, the manufacturer doing that would do as in this case -- isolate himself from his other classes of trade.

MR. WHITELEY: I am not suggesting what the result might be, but I am saying the only way he could proceed is by making an agreement.

MR. PEVERIL: In that particular instance he apparently thought a reasonable price was going to be maintained, and then he could not do anything about it.

MR. WHITELEY: He could not do it in any case. He had already sold the articles. He could not say, "I won't sell you any more."

MR. PEVERIL: In all probability, sir, he said, "On condition they are sold at this price; that is my price."

MR. WHITELEY: You are suggesting now something now other than resale price maintenance.

THE CHAIRMAN: It is a term of the contract between the two. Ordinarily we have certainly understood that resale price maintenance resulted from the unilateral action of the man who fixed the price, and did not require any agreement: "This is the price I suggest, and if you don't carry it out you had better get your goods from somebody else."

MR. PEVERIL: Could that not be done on the customer's brand-name -- could he not say the same thing?

MR. WHITELEY: No, because it is not a continuing brand.

MR. PEVERIL: It is your contention if one has the right to impose a given price on a branded article, that he has the same right to impose it on an unbranded article as long as it can be identified?

MR. PEVERIL: I would say as long as it can be identified, but that would be a matter for the manufacturer to decide, because it would be his position that would be jeopardized by the relationship.

THE CHAIRMAN: If there is nothing on the article to show that it is a product of that manufacturer, how is he jeopardized?

MR. PEVERIL: It is obvious to anyone who has seen the two, because there is a particular

snake where the manufacturer's name goes, and that same shape is there, but there are four other letters.

MR. FAVREAU: Well, could you recognize a C C M. bicycle under another name?

MR. PEVERIL: You may.

MR. FAVREAU: It all depends how well well-known the article is.

MR. CROWDER: On this particular point is there any importance or merit to the idea that a manufacturer establishes his resale price under price maintenance whether he does it by declaration of policy or by agreement? I recall at one time the Waterman Fountain Pen Company had price maintenance years ago by a signed agreement between themselves and the retail distributor. I signed one of them once, many years ago. Other manufacturers came in and said, "This is our policy. If you want to sell our merchandise you do so for X dollars, and if you don't do that you won't get any more."

THE CHAIRMAN: It can be done either way.

MR. CROWDER: The agreement was only a means to an end, the end was price maintenance.

MR. FAVREAU: It is most likely it has never been tested in court.

THE CHAIRMAN: Well, until it was left out it was part of a contractual obligation.

MR. CROWDER: It only added moral fibre to the situation.

MR. GOBEIL: Naturally as a distributor we are interested in this line, being part of a chain. We are the link between the manufacturer and the retailer, and I just want to mention that we believe the manufacturers ought to have something to say about the methods of pricing as far as the resale is concerned, because invariably the lines like those mentioned -- market brand lines -- coming to us from well-known manufacturers, and we had to return our stock to the manufacturers and the fact is for the last couple of years there are several good brand lines which we have cancelled from our list entirely. We instructed the purchasing department not to buy them any more. We believe it is not good for business in general, or for economy, but we could not market -- we could not sell it, but it was used in such a way by the retailers that most of them won't handle them any more. These good brand lines, as you know, are items that are nearly essential to the small retailer, to the small country store; that is where he makes his profit and an easy sale, and that is where he can make a sale due to the large advertising being made in the last few years since this price amendment has been lifted. We cannot sell any of these lines to the small merchants; you can sell one or two if the sale is already made but he won't carry it in stock. He is up against these stores advertising widely, and he cannot compete with them and take a fair

mark-up. Not only that, it destroys the goodwill of the customers. A lot of them think they are being taken advantage of, when really it was just a regular price. We believe the only way there is to overcome this is to revert naturally to the manufacturer who can choose his source of distribution, because even as distributors nothing prevents our company at the present time from hurting immensely some of the wonderful advertised lines in Canada. We can hurt them so much we can put them out of the market in about six months, because we have the right to do it; it is our privilege to do it if we want to make capital ourselves, and advertising at the expense of manufacturers who have invested a large amount of money and invested their capital to such an extent that their goods are accepted. We think that should not be our privilege, but the way things are now, we think we should do it.

THE CHAIRMAN: I ought to make one comment here: What I said in reply to Mr. Crowder may have left a wrong impression. He was asking about the question of agreements that were signed, and I said if it was not for resale price maintenance that an agreement of that kind would be within Section 2 of the Combines Act which has been in force for many years.

MR. MILLER: There is very little I can add to what Mr. Gobeil has already said, but it seems to me in my experience that there are no

lines today where competition and price-cutting has -- not particularly competition, but price-cutting is a bad thing, and if some price maintenance was in effect it would be a protection for the manufacturers and for us in the lines on which a legitimate margin of profit is necessary to operate a business. As has been pointed out, we have it in our power today to take a well-known line and put a price on it and wreck it in no time.

MR. WHITELEY: You would not be selling to the public?

MR. MILLER: We would sell to the merchant. Supposing we take Prestone, a well-known line, and the price was 4.50 a gallon, and we offered it at a ridiculous price; we could do that and then, would have no say in the matter at all. We could do as we liked with it.

MR. WHITELEY: How do you say that would affect it?

MR. MILLER: That could ruin the line for them for a long time.

MR. WHITELEY: In what way?

MR. MILLER: Well, because the price set-up would be wrong; the retailer would cease to buy the line because there would be no price on it any more; he could not make a profit.

MR. FAVREAU: But the customers would force the dealers to keep it in stock.

MR. WHITELEY: Why couldn't the dealer still make a profit if you gave it to him more

cheaply?

MR. MILLER: The price set-up would be wrecked immediately; I am sure of that. We have seen it time and again and there are many items like that today just because there is no price level at all. Competition amongst wholesalers and other individuals outside our Association are just wrecking a lot of lines. I am sure many of the other men could cite item upon item affected in that way.

MR. WHITELEY: Can you cite some?

MR. MILLER: On wire nails, for example, there is hardly a legitimate mark-up on them.

THE CHAIRMAN: Are they not being stocked at all?

MR. MILLER: They are stocked all over the place, but the price is being wrecked because we cannot maintain a legitimate margin of profit.

THE CHAIRMAN: But they are still available?

MR. MILLER: They are still available to the consumer, but right along the line our profit is cut, the manufacturer's profit is cut and so is the retailer's.

MR. WHITELEY: How is the manufacturer's profit cut?

MR. MILLER: Because he gave a reduction in price to us to meet competition from overseas imports, and the result is that that has created a condition.

MR. WHITELEY: How does the question of imports come into this?

MR. MILLER: Because the price in England is lower than in Canada, and they have to come down to it.

THE CHAIRMAN: The price in England is lower?

MR. MILLER: Yes.

THE CHAIRMAN: In the United States it is a good deal higher?

MR. MILLER: Oh, yes.

THE CHAIRMAN: So there is no competition from the United States?

MR. MILLER: No, not from the United States. It is from England.

THE CHAIRMAN: But if the prices of Canadian-manufacture are being cut, I would have thought that would make it more difficult for the English nails to come in?

MR. MILLER: It has made it a little difficult, but there is still a margin there where they could be imported. That is what is happening. The people who want to protect Canadian industries are trying to do it and don't want to import goods into Canada, they are suffering because others will import these lines and cut the price. I am sorry I haven't an exhibit to show you here, but I had a price list on my desk today.

MR. WHITELEY: These are not branded lines, are they?

MR. MILLER: Well, you don't brand wire nails.

THE CHAIRMAN: If the price of Canadian-manufactured nails is maintained, and the price of English imported nails is lower, price maintenance won't stop the imports?

MR. MILLER: No, I will agree with that, but that is what is happening in competition. I agree we would have to get the import situation fixed up. The other lines we buy, the manufacturer should have the right to maintain the resale price, and it would be a great help to wholesale hardware. We can cite many lines.

MR. GOBEIL: With your permission, Mr. Chairman, I had this on my desk this morning, an advertisement from a firm in the city, which advertises a very well-known line. I have asked our purchasing department to cancel it from our list. It is a quick cleaner advertised at 69.95; our wholesale price is 69.97.

THE CHAIRMAN: It is a vacuum cleaner?

MR. GOBEIL: Yes, a G.E. The wholesale price is 69.97, and this is advertised at 69.95 -- "regular value 129.95", which is not right. The correct suggested retail value is 99.95, but he advertises it at 129.95. So, how does the retailer make anything when it is 69.97 and he sells it for 69.95. There are several items there like that.

THE CHAIRMAN: Do you want to file that as an exhibit?

MR. GOBEIL: Yes, I can.

---EXHIBIT M-4: Advertisement

MR. GOBEIL: Possibly you want information on the other items, and I could give you the whole-sale price.

THE CHAIRMAN: Well, I will try to identify the document first.

MR. GOBEIL: The sale was on May 27th.

THE CHAIRMAN: An advertising pamphlet referring to a sale to commence on the 27th of May at 10.00 o'clock is exhibited and filed and marked as Exhibit M-4. Mr. Gobeil, I pass this back to you, and if you would mark the one you have just referred to with the letter "A", and if you wish to refer to others, do so, and mark them "B", "C" and "D"

MR. GOBEIL: Yes, I will do so.

MR. STEVENS: Mr. Chairman, I think this is covered very ably by our past speakers. This hearing was on loss-leaders and premiums. As I see these articles being offered as loss-leaders and premiums, I think they are of the greatest detriment to the hardware trade. I am talking of the older firms. Some of the firms have been in business for years and years. We ourselves have been in business for 80 years, and there is a doubt placed in the minds of the public that we, the hardware people, have charged too high a price in the past. They have taken articles which are common to the hardware trade, and such articles, I think, principally which appeal to

the women, and priced them or given them as a premium, or offered them at a reduced price, and I think that is one of the detriments to a legitimate hardware trade which we have to complain about. In truth, we could not have existed for 80 years if we had not got a profit, but we have tried to keep our profit fair to the public. We have had to do it because there is always competition. We in our town are not alone, we have competitors and we also have to maintain quality and at the same time be fair. As I see this whole price structure today, it has built up a lack of confidence in those standards, and in those firms who have for years and years operated in a fair and legitimate manner. That is the greatest thing that I can say, that it is the breaking down of this confidence which is ^a detriment to us in the hardware business, and I think there must be ways of correcting this, and that way would be to go once again to the Government, after due consideration, for guidance and help in maintaining those things for which we have stood for years. I thank you, sir.

THE CHAIRMAN: It may well be that one or two of the things about which you were speaking are outside the scope of our inquiry.

MR. ROY: Mr. Chairman. there is not much that I can add to what has been said. We have had a good many complaints from our customers on sales of cutlery and kitchenware and electrical stuff,

that it has been given away by the department stores and chain stores -- selling cereals and soaps as a premium. Of course, that has cut their sales substantially. I can tell you from my own experience that I have abstained from buying from one particular firm making furniture polish because they were offering a fountain pen or a table lamp on a 15.00 deal. Well, I said to the fellow, "You must be buying a lot of fountain pens", and he said, "Oh, yes, we are buying them by the thousand", and he said it was a 5.00 fountain pen. I said "Suppose it goes to 2.50, would you reduce that deal by 2.50? And he said, "No, that is part of our policy". Now they have changed, and they are giving some extra goods as a premium on those deals, but they are wrecking the other fellow's business to boost their own. The fellow who sells cereal or soap does not care if he gives away knives or forks or spoons -- he is hurting the hardware trade. If we started selling cereals and giving them away I know how they would feel about it.

MR. FAVREAU: You could sell pans with the oatmeal already in it.

MR. ROY: Yes.

MR. GERIN-LAJOIE: I think the Commission has covered the ground. I have no questions.

THE CHAIRMAN: If there is nothing more to say, I express our appreciation, gentlemen.

for your coming and giving us the benefit of your
views.

---The hearing adjourned until 2.00 p.m. tomorrow.

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